

BOOKS Printed for D. Brown in Exeter Exchange in the Strand; T. Ward in the Inner-Temple-Lane; and W. Meares at the Lamb without Temble-Bar.

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All Dr. Sherlock's Practical Pieces, viz. His Discourse concerning Death. His Discourse concerning Future Judgment; Concerning the Divine Providence; Concerning the Happiness of Good Men, and the Punishment of the Wicked in the next World, containing Proofs of the Immortality of the Soul, and Immortal Life. Likewise Sermons upon several Occasions; in 2 Vols. all in 8vo.

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9cc

H. GROTIVS

Of the RIGHTS of

WAR *and* PEACE,

In THREE VOLUMES;

In which are explain'd

The LAWS *and* CLAIMS of
NATURE *and* NATIONS,
AND THE

Principal Points that relate either to
Publick Government, or the Conduct
of Private Life.

Together with the

AUTHOR's *own* NOTES.

*Done into English by several Hands; with the Ad-
dition of the Author's Life by the Translators.*

*Dedicated to His ROYAL HIGHNESS the
PRINCE of WALES.*

VOLUME the FIRST.

LONDON. Printed for D. BROWN in Exeter-
Exchange in the Strand; T. WARD in the Inner-
Temple Lane; and W. MEARES at the Lamb with-
out Temple Bar. M DCCXV.

1/4

REGIUM

OF THE RIGHT

WAR

IN THREE VOLUMES



to
conduct

Practical

of the

AUTHOR'S OWN

Original English

to be used in the Royal

VOLUME the FIRST

London: Printed by J. B. Smith, in Strand, 1789.



TO HIS
ROYAL HIGHNESS
THE
PRINCE
OF
WALES.

SIR!

THE Subject of this
Book being *The Rights*
of WAR and PEACE,
a proper Entertainement for a
A 3 PRINCE,

DEDICATION.

PRINCE, I have presum'd to lay it, with all Humility, by the Consent of the other Gentlemen engaged in the Work, at Your ROYAL HIGHNESS's Feet; and hope such an Admirable System of *Justice*, of the Laws of *Nature* and *Nations*, and of those true Maxims of *Christian Policy*, which are the only solid Foundations of all Government, cannot be unacceptable to so Just, so Good, so Excellent a PRINCE.

YET I believe my Ambition, SIR, would have hardly soar'd so high, had not *Grotius* thought the *Original* a fit Present for one of the Greatest Princes

DEDICATION

Princes in *Europe*; and perhaps
LEWIS XIII. may live longer
before this Work than in all
the Chronicles of his Reign.
But this being only a *Translation*
of it, tho' the Best, I hope,
which has yet appear'd in our
Language, pretends not to
give Your ROYAL HIGHNESS
any such Immortality: Im-
mortality You have secur'd al-
ready, and done enough, both
in *War and Peace*, to make Your
NAME Glorious, whilst *Britain*
has any Virtue, or Gratitude,
or Love of Glory!

THOSE Heroes and Wor-
thies, Your ROYAL HIGH-

A 4

NESS

DEDICATION

NESS knows, who excell'd
only in the *Field*, in the *Senate*,
or at the *Council-Board*, have fur-
nish'd out the Brightest Cha-
racters in History; and little
thought *Rome* and *Athens*, when
one good Quality was enough to make
a God, that ever the Justice of
Aristides, the Wisdom of *Cato*,
the Urbanity of *Atticus*, and
the Courage and Conduct of
Caesar, would stand All Col-
lected in One August and Il-
lustrious *British PRINCE!*

WHEN the only way to be
Great is to be Wise and Good,
and the ROYAL FAMILY
Themselves make *Virtue* Their
Guide

D E D I C A T I O N.

Guide and Glory, *Religion* puts
on a Thousand Ornaments
and Graces, and shines Bright
and Wide from such a Glori-
ous Heighth! T H E N the Vir-
tuous look up, and try to Imitate!
The Wicked Gaze, Adore, and Tremble!

F O R how, may it please
Your R O Y A L H I G H N E S S,
must it strike the greatest Li-
bertine, to see the P R I N C E of
W A L E S Excelling in all the
Duties of Husband, Father,
Master! How must it pall the
Luxurious and Irregular, to
see His strict Temperance,
Sobriety, Abstinence! Nay,
how

DEDICATION.

how must it check the Worst
of Men, to see the *Ancient Vir-*
tues blooming in a *Modern*
Court, and all the *Polish'd Graces*
of the *New World* united with
the *Innocence* and *Integrity* of the
Old!

THESE, These are Goods,
GREAT SIR, which Time
can't wear away, nor any
Turns of Empire Ravish from
You! Goods above all *Ambi-*
tion can desire, or *Fortune* be-
stow! Virtues which have
lull'd *Envy* herself asleep,
which all Men commend a-
loud, and no One thinks he
commends too much, whilst
he

DEDICATION

he allows You to be a Man and to
be Mortal.

*PLURIMÆ consentiunt Gentes,
Populi primum esse Virum---Nec
verò Ille in LUCE modò, atque
in OCVLIS Civium MAGNUS,
sed INTUS!*

WHEN our Wise and Just
KING shall be call'd before
an higher Throne, to receive
the Reward of a Long, I
hope, and Prosperous Reign,
that Your ROYAL HIGHNESS,
and many Generations of
Your ILLUSTRIOUS HOUSE,
may still promise fresh Hap-
piness

DEDICATION.

pinefs and Glory to *Britain*,
is the Hearty Desire of,

SIR,

Your Royal Highness's

Most Dutiful,

Most Obedient, and

Most Humble Servant,

JOHN MORRICE.

T H E

Translators Preface.

THIS Book is so well known to all the Learned World, and has the Honour of being so frequently quoted in the British Senate, that we need not say any thing in Praise of the Original, or to justify a Translation of it. Here the Prerogative of Princes, and the Privileges of Subjects, are set in the fairest Light: Here our own happy Constitution is sufficiently defended; and perhaps when Property runs so high, and Men are so desirous to know all their Claims, it may find better Encouragement in our Nation than Works of this Nature usually do. A Neighbour Kingdom, by Countenancing Labours of this sort, and allowing 'em almost the same Honour with Original Productions, see the Learning of all other Languages make a Tolerable Figure in their own.

Bid

The Translators Preface.

But the Translators of this Book, who are Gentlemen of various Professions, propose neither Interest nor Honour for their Trouble; they undertook it with no other View than to be serviceable to their Country; and therefore hope their Characters will not be the Worse, at least, for so Noble a Design, though Publick Spirit is almost out of Fashion. That there are other Gentlemen among us more Equal to this Task than our selves, is an Objection which lies as much perhaps against all other Works as this. But from them, indeed, we fear the least Censure, and hope the most Thanks: They know the Obscurity of our Author, that they would not have been Infallible if they had done it themselves, and have Cander enough to forgive those Mistakes which are incident to Men. And as for those of a lower Genius, who make a Merit of finding Faults, they would do well to consider, that tho' they can discover Spots in the Sun, they will not therefore be thought to out-shine him.

The Translators Preface.

As to the Translation it self, the World must judge; but to prevent too hasty a Censure upon any seeming or real Mistakes, we think fit to premise, That it was perus'd and approv'd, and, if we may decently say it, applauded too, by Men of the best Note in this sort of Literature, before we suffer'd it to go Abroad. So obscure and ill-turn'd is the Style of our Author, he regarding Matter more than Dress, that we conceive it impossible to be certain in some Places; yet we hope we have very seldom deviated from his Sense. What Literal or Verbal Errors have escap'd us, are such, we believe, as Common Readers will hardly observe, and the most Intelligent kindly Pardon. We are apprehensive the same Words may be sometimes differently render'd, the Work being done by several Hands; yet always so, we trust, as may be justified by the Context. 'Tis hardly credible how much Time and Pains the Notes have cost us, they being very often Half-Sentences, and such as could no ways be English'd without consulting the Places they were taken from. What Quo-
tations

The Translators Preface.

tations he has made out of the Greek, both in the Text and Notes, are Translated from the Original, and not from his Latin Version, in which we humbly think him sometimes mistaken.

If we vary in any of the Terms, we may well hope to be excus'd, since Civilians are unagreed about 'em. How little we have been beholden to those who went before us will soon appear upon Comparison, and so much to our Advantage, if we are not excessively flatter'd, that we may not well be deny'd the Honour of first teaching Grotius de Jure Belli & Pacis, to speak true and proper English.



THE

THE
L I F E
O F
HUGO GROTIUS.

 O look into the Manners of *Antiquity*, and recover the Memory of *preceding* Ages; is an Entertainment of the highest Pleasure and Advantage to the Mind, it establishes very lasting Impressions of *Virtue* in us, *enlarges* the Soul, and moves our Emulation to follow and excel the *leading* Characters before us; when we are tracing the Exploits of some *Worthy* of *Old*, with what *Delight* do we pursue him in every Circumstance of
a Action,

Action, we admire the *Example*, and transmit the *Beauties* of his Life into our own Conduct by *Practice* and *Imitation* for the *Mind* of Man is of a *searching* Nature, very *wide* and *extensive* in her Speculations; and as she is *blind* to the Transactions of *Futurity*, so she receives a greater Lustre from the *Reflection* of Instances that are *past*, than from the *Rules* of *Wisdom*, or the *Determination* of the *Schools*: φιλοσοφία ἐκ παραδείγματων, *Philosophy* from *Example*, in the Opinion of the *Historian*, advances Human Life beyond the Power of *Precept*, or the *Distinctions* of *Morality*, it opens a large Scene for *Observation*, it displays all the *Occurrences* and *Revolutions* of *Providence*, how far *Application* and *Industry* improve the *Abilities* of the Soul, and offer us to the *Notice* of *Mankind*, and the *Wonder* of *Posterity*.

This *Life* of GROTIVS is not written with a Design to enlarge upon his *Merits* or to *adorn* his Character, who has left such *Illustrious* Testimonies of his *Learning*, *Zeal* and *Piety*, that the Letter

World

World submits to his *Authority*, and Re-
veres his *Judgment* so much, that his
Name will be venerable to *latest Ages*:
Our present Aim is only to reduce the
Circumstances of his *Life* into such a Me-
thod as will shew us by what *Steps* and
Degrees he attain'd to so *high* an Esteem,
as to derive an *Honour* upon the *Century*
he liv'd in, and to recommend him as
a *Pattern* to succeeding Ages.

Hugo Grotius, in Dutch, *de Groot*, one
of the greatest Men in *Europe*, was born
at *Delft* the 10th of *April* 1583; where
his *Family* had been *Illustrious* between
Four and Five hundred Years. He made
so early a Progress in his *Studies*, that he
writ some *Verses* before he was *nine Years*
of Age; and at *Fifteen* he had a great
Understanding in *Philosophy*, *Divinity* and
the *Civil Law*; but he was still better skill'd
in *Philology*, as he made it appear by the
Commentary he writ at *that* Age upon
Martianus Capella, a very difficult Au-
thor. So prodigious was his *Memory*,
that being present at the *Musters* of some
Regiments, he remember'd the Names

of ev'ry Soldier there. In the Year 1598 he accompany'd the *Dutch* Ambassador, the famous *Barnevelte*, into *France*, where *Henry IV.* gave him several Marks of his Esteem; he took there his Degree of *Doctor of Law*, and being returned into his Country, he applied himself to the *Bar*, and pleaded before he was Seventeen Years of Age; he was not Twenty four Years old when he was made *Advocate-General*; he settled at *Rotterdam* in 1613, and was *Pensionary* of that Town; he would not accept of that Employment, but upon Condition that he should not be depriv'd of it; for he foresaw that the Quarrels of *Divines* about the Doctrine of *Grace*, which form'd already a thousand *Factions* in the *State*, would occasion many *Revolutions* in the chief Towns; he was sent into *England* in the same Year, by reason of the Misunderstanding between the *Merchants* of both Nations; he wrote a Treatise upon that Subject, and called it *Mare liberum*, or a Treatise shewing the Right the *Dutch* have to the *Indian Trade*. He found him-

The Life of Hugo Grotius.

v

himself so far engag'd in the Affairs which
undid *Barneveldt*, that he was Arrested in
August 1618, and condemn'd to *perpe-*
tual Imprisonment the 18th of *May 1619*,
and to *forfeit his Estate*; he was confin'd
to the Castle of *Louvestein* the 6th of
June in the same Year, where he was se-
verely used for above 18 Months; from
whence, by the Contrivance of *Mary de*
Regelsberg his *Wife*, he made his Escape,
who having observed that the *Guards*, being
weary of searching a large *Trunk* full of
Books and Linnen to be wash'd at *Gor-*
cum, a Neighbouring Town, let it go
without opening it as they used to do,
advised her *Husband* to put himself into
it, having made some *Holes* with a Wim-
ble in the Place where the fore-part of
his *Head* was, that he might not be stifled.
He follow'd her Advice, and was in that
manner carried to a *Friend* of his at *Gor-*
cum; from whence he went to *Antwerp*
in the usual Waggon, after he had crossed
the Publick Place in the Disguise of a
Joyner, with a Ruler in his Hand. That
good Woman pretended all the while that

her *Husband* was very *Sick*, to give him time to make his *Escape* into a *Foreign* Country: But when she thought he was safe, she told the *Guards*, laughing at 'em, that *the Birds were fled*. At first there was a *Design* to *Prosecute* her, and some *Judges* were of *Opinion* she should be kept in *Prison* instead of her *Husband*; but by a *Majority* of *Votes* she was released, and praised by every body, for having by her *Wit* procured her *Husband's Liberty*. Such a *Wife* deserved not only to have a *Statue* erected to her in the *Commonwealth of Learning*, but also to be *canoniz'd*; for we are indebted to her for so many *Excellent Works* Published by her *Husband*, which had never come out of the *Darkness of Louvestein*, if he had remained there all his *Life-time*, as some *Judges* appointed by his *Enemies* design'd it.

He retir'd into *France*, where he met with a kind *Reception* at *Court*, and had a *Pension* assign'd him; the *Dutch Ambassadors* endeavour'd to prepossess the *King* against him, but that *Prince* did not

him not regard their *Artifices*, and gave a glorious Testimony to the Virtue of that illustrious Refugee, and admir'd the Virtue of the Man, who being so ill used in his Country, never omitted an Opportunity to advance its Interest, and encrease its Grandeur. He applied himself very closely to Study, and to compose Books. The first he publish'd after he settled in France, was an *Apology for the Magistrates of Holland*, who had been turn'd out of their Places. The contrary Party was very much displeas'd with this *Treatise*, they thought Grotius made it appear that they had acted against the Laws, and therefore they endeavour'd again to ruin and defame him, but the Protection of the French Court secur'd him against their Attempts.

He left France after he had been there Eleven Years, and return'd into Holland full of Hopes, by reason of a kind Letter he receiv'd from Prince Frederick Henry who succeeded his Brother in that Republick; but his Enemies prevented the good Effects of that Letter, and therefore he

was forced once more to leave his Country; he resolv'd to go to *Hamburg*, where he stay'd till he accepted the Offers he receiv'd from the Crown of *Sweden*, in the Year 1634. Queen *Christina* made him one of her *Counsellors*, and sent him *Ambassador* to *Lewis XIII*. Having discharg'd the Duties of that Employment about *Eleven Years*, he set out from *France* to give an Account of his Embassy to the Queen of *Sweden*; he went through *Holland*, and receiv'd many Honours at *Amsterdam*, he saw Queen *Christina* at *Stockholm*, and after he had discoursed with her about the Affairs he had been entrusted with, he most humbly beg'd of her that she would grant him his Dismission. The *Queen* gave him no positive Answer when he ask'd leave to retire, which displeas'd some Great Men, who were afraid that she would keep him in her *Council*: He perceived their Discontent, and was so pressing to obtain his Dismission that it was granted him at last. The *Queen*, upon his Departure, gave him several Marks of her great Esteem

steem for him. The *Ship* on Board which he embark'd was violently tost by a Storm on the Coasts of *Pomerania*; *Grotius* being sick, and uneasy in Mind, continued to Travel by Land, but his Illness forc'd him to stop at *Rostock*, where he died in a few Days, on the 28th of *August* 1645. His Body was carried to *Delft* to be buried among his Ancestors; he left behind him three *Sons*, and one *Daughter*. The *Daughter* was married to a *French* Gentleman called *Mombas*, who was very much talk'd of, on Occasion of a Trouble he was brought into soon after the *French* had pass'd the *Rhine* in the Year 1672. The *eldest Son* and the *youngest* pitched upon a *Military* Life, and died without being married. The *second*, whose Name was *Peter de Groot*, made himself illustrious by his *Embassies*. The *Electors Palatine* being restored to his Dominions by the Treaty of *Munster* appointed him his *Resident* in *Holland*: He was made *Pensionary* of the City of *Amsterdam* in 1660, and discharg'd the Duties of that Place with great Ability for the space of
Seven

The Life of Hugo Grotius.

Seven Years. He was sent *Ambassador* to the *Northern Crowns* in the Year 1668. At a *Year's End* he went into *France* with the same Character, and acquitted himself in that Employment with great Dexterity and Wisdom. When the *War* was kindled 1672, he return'd into his Country, and was depriv'd of his Office of *Pensionary* at *Rotterdam*, which he had enjoy'd ever since his Return from his Embassy into *Sweden*: He was depriv'd of it during the *Popular Tumults*, which occasion'd so many Alterations in the Towns of *Holland*. He retir'd to *Antwerp*, and then to *Cologne*, whilst the Peace was treating there, and acted for the Good of his Country as much as ever he could; and yet when he return'd into *Holland* he was accused of a *State Crime*; The Cause was tried and he was acquitted; He retired into a *Country-House*, where he died at 70 Years of Age;

The Calumnies, maliciously dispersed by the *Enemies of Grotius*, about his *Death*, are irrefragably confuted by the Relation of the *Minister* who attended upon

upon him when he was dying. The Minister, call'd John Quistorpius, was Professor of Divinity at Rostock. His Relation imports, " That he went to Grotius who had sent for him, and found him almost dying; that he exhorted him to prepare for *Death*, in order to enjoy a more happy *Life*, to acknowledge his *Sins*, and to repent of 'em; that having mention'd to him the *Publican*, who confess'd himself a *Sinner*, and begg'd God's Mercy, the sick Man answer'd, *I am that Publican*; that he went on and told him he should have Recourse to *Jesus Christ*, without whom there is no Salvation, and that Grotius replied, *I place all my Hopes in Jesus Christ alone*; that he repeated in a loud Voice a Prayer in *High-Dutch*, and that the sick Man said it softly after him with his Hands joined; that having ended, he ask'd him whether he understood him, and his Answer was, *I understood you very well*; that he continued to repeat to him some Passages of the *Word of God*, which dying People are usually
" put

“ put in Mind of, and to ask him, Do
 “ *you understand me ?* and that Grotius
 “ answer'd, *I hear your Voice, but I don't*
 “ *understand every thing that you say*; that
 “ with this Answer the sick Man lost
 “ his *Speech*, and *expired* soon after. It
 were an absurd Thing to call in Question
 the *Sincerity* of *Quistorpius*, nothing
 could move him to be false in his Account,
 and 'tis certain that the *Lutheran*
Ministers were no less displeas'd than the
Calvinists with the particular Opinions of
Grotius, and therefore the Testimony of
 the Professor of *Rostock* is an Authentick
 Proof; and if such Evidence is not
 sufficient in Matters of Fact, we make
 way for *Scepticism*, and 'twill be difficult
 to *prove* any thing. 'Tis therefore an
undeniable Case that *Grotius* being
 a dying, was affected like the Publican
 mention'd in the *Gospel*, he *confess'd*
 his Faults, he was *sorry* for them, and
implor'd the Mercy of his *heavenly Father*;
 that he placed all his *Hopes* in *Jesus Christ*
 alone; that his *last* Thoughts were those
 that are contained in the *Prayer*

er of dying People, according to the Liturgy of the Lutheran Churches. The result of which is, that those who say he died a Socinian, would be too gently used if they were only told, that they are guilty of a rash Judgment; they are Persons prejudiced against the Character of this Great Man, and therefore very unworthy of our Belief. Several People have wonder'd that his Grand-Children did not ask Satisfaction for this Injury done to his Memory, and that they appear'd less sensible in this Point, than *Jansenius's* Relations upon slighter Calumnies; but some Persons highly approve their waving all Juridical Proceedings. There is a solid Answer to that Reflection upon our Author made by a Book entitled *l'Esprit de Mr. Arnauld*; and since the Accuser made no Reply to it, 'tis a plain Sign he has been convicted of Calumny. The Apologist for the Character of Grotius begins thus, " But, Sir, " what that Author and Father Simon " say of Grotius, is nothing, if compared " to what the nameless Author of the " Scandalous Libel intituled *l'Esprit de* " Mr.

“ Mr. Arnould says of him; 'tis true,
“ he slanders every Body in that Book,
“ and the manifest Lies that are in it,
“ ought to make one disbelieve every
“ Thing else; but because some are so
“ weak, as to be imposed upon by his Bold
“ way of speaking, because some of those
“ to whom you shew my Letters, enter-
“ tain an ill Opinion of Grotius upon
“ that Account, you'll give me leave to
“ undeceive 'em. Perhaps they will not be
“ displeas'd to find an Author, for whom
“ they have so great an Esteem, guilty of
“ the most horrid Calumny that ever was;
“ this will teach them, that one ought to
“ suspect those who appear so zealous for
“ Truth, and that sometimes a prodigious
“ Malice and Detraction are concealed
“ under the zealous Pretence of defend-
“ ing the Church of God. Afterwards the
“ Apologist examines the four Accusations
“ one after another; I shall not dwell on
“ what he says upon the first Head, viz.
“ That Grotius was a violent Arminian.
“ Grotius, says our Author in the second
“ Place, was a Socinian, as appears from
“ his

his enervating the Proofs of Christ's
 Divinity. Sir, desire your Friends to
 read Grotius's Annotations upon the
 Passages of St. Mark and St. John which
 I have mention'd to you, and if they do
 not say that it is an abominable Calum-
 ny, I am willing to be accounted a most
 wicked Calumniator. See also the
 DXLVIIIth Letter among the Literæ
 Ecclesiasticæ & Theologicæ." I should
 be too long should I mention what he says
 upon the Third Head, I shall only set down
 this Passage out of it, "When Mr. Ar-
 nauld says something that is injurious
 to the Reformed, the Author of the Li-
 bel exclaims violently against him,
 and Mr. Arnauld is then an *unsincere*
 Man, an *unfair Accuser*, an *Infamous*
Calumniator; but when he says some-
 thing that may serve this *Satyrical Wri-*
ter to inveigh against those whom he
hates, every thing is then *right*, it
 serves him to fill up his *Page*, and to
 prevent his being placed among the
little Authors.

I must not forget that Mr. Arnauld blames the Lutheran Minister for not asking Grotius in what Communion he would die, This is a Material Thing, says Mr. Arnauld, "with respect to a Man
"who was known to have had no Com-
"munion a long time with any Prote-
"stant Church, and to have confuted in
"his last Books most of the Doctrines that
"are common to them. Whereupon
"the Apologist says, that Mr. Arnauld
"and the Author of the Libel do wrong-
"ly fancy, that a Man has no Religion
"when he joins with none of the Fatti-
"ons that condemn Mankind, and each
"of which pretends to be the only Church
"of Christ. Grotius abstained from com-
"municating with the Protestants, as
"well as with the Papists, because the
"Communion, which was appointed by
"Christ as a Symbol of Peace and Con-
"cord among his Disciples, is account-
"ed in those Societies a Sign of Discord
"and Division Quistorpius acted
the Part of a wise Man in not asking him
what Communion he would die in, since
he

he saw him dying in the Communion of *Jesus Christ*, by vertue of which we are saved, and not by vertue of that of the Bishop of Rome, or of the several Protestant Societies

Without enquiring whether *Quistorpius* was in the Right or the Wrong for not asking such a Question, we observe, that a Man who believes the Fundamental Doctrines of Christianity, but forbears receiving the Communion, because he looks upon that Action as a Sign that one damns the other Christian Sects, cannot be accounted an Atheist, but by one who has forgot the Notions of Things or Definitions of Words ; nay, we go farther, and maintain it cannot be denied that such a Man is a Christian ; we allow you to say, that his believing all the Sects that receive the Gospel to be in the way to Salvation is an Heresie ; we allow you to assert, that it is a Pernicious and Dangerous Doctrine ; notwithstanding which, can it be said that those who believe that *Jesus Christ is the Eternal Son of God, coessential and consubstantial with the Father, that he*
b
died

died for us, that he sits at the Right Hand of God his Father; that Men are saved by Faith in his Death and Intercession; that one ought to obey his Precepts, and repent of one's Sins, &c. we say, can it be affirm'd that such People are not Christians? No Man of Sense can affirm it; but none would be more unreasonable in asserting such a thing than the Author of *l'Esprit de Mr. Arnauld*, since he publish'd another Book, wherein he shews that all those who believe the Fundamental Points belong to the True Church, whatever Sect they may be of. We omit several other *Maxims* advanced by him, whereby it appears, that one may be saved in all Religions; we only mention such Doctrines as he cannot deny, and according to which he ought to acknowledge, that Grotius, who believ'd the Fundamental Doctrines, without approving Calvinism or Popery, &c. in every thing, was a Member of the True Church.

We suppose that what has been delivered may be of sufficient Force to overthrow the *Calumnies* that have been raised
against

against our *Author*, in respect to his *Principles in Religion*; we shall now take a short Survey of the most eminent *Books* that were *Published* from him.

During his stay at *Paris*, before he was Ambassador of *Sweden*, "He Translated
" into *Latin* Prose his Book concerning the
" *Truth of the Christian Religion*, which he
" had writ in *Dutch* Verse, for the Use of
" the *Seamen* who Travel into the *Indies*,
" that they might have some Diversion in
" Singing such a Pious Poem". Thus
du Maurier speaks of it; but he is very
much to blame for giving such a mean
Notion of the *Author's* Design, for *Gro-*
tius aimed at a nobler End; he had a mind
to inable the *Dutch*, who Travel to the
Indies, to promote the Conversion of the
Infidels; this is the Character he gives of
it himself, My Resolution was to do some-
thing of Advantage to all my Countrymen,
but especially for *Seamen*, that in all their
Leisure they have Aboard, they may use
their Time with Profit to themselves, and
not loiter away their Hours as some do.
And therefore beginning with a Panegyrick

The Life of Hugo Grotius.

upon my own Nation, which infinitely excels all others in this Art; I encouraged them, that they would improve their Art, not only for their Benefit and Gain, but that they would regard it as the Mercy of Heaven, and use it for the Propagating of the Christian Religion. 'Tis an excellent Work, and the Notes upon it are very learned. It was Translated into English, French, Dutch, German, Greek, Persian, and Arabick; but we don't know whether all those Translations have been Published, the Greek was not Printed in the Year 1637. In the Year following Grotius mentions the Persian Translation only, as a Book which the Pope's Missionaries had a mind to Publish. My Book, says he, concerning the Truth of the Christian Religion, that is accounted Socinian by some, is so far from having that Character here, that it is to be turned by the Pope's Missionaries into the Persian Tongue, to Convert, by the favour of God, the Mahometans who are in that Kingdom. In the Year 1641, an Englishman, who had Translated that Book into Arabic, was desirous his

Tran-

Translation should be Printed in *England*. There came a very Learned *Englishman* to me within these few Days, says he, who lived a long time in the *Turkish* Dominions, and Translated my Book of the *Truth of the Christian Religion* into *Arabic*, and will endeavour, if he can, to have it Published in *England*: He thinks no Book more profitable, either to instruct the *Christians* of those Parts, or to Convert the *Mahometans* that are in the *Turkish, Persian, Tartarian, Punic* or *Indian* Empire. That Translation made by the famous Dr. *Edward Pocock* was Printed at *London* in the Year 1660. There are three *German* Translations of that Work, two in *Prose*, and one in *Verse*, and two *French* Translations in *Prose*.

Grotius writ an *History* of the *Low-Countries*; it contains an Account of what happened in the *Netherlands* from the Departure of *Philip the Second*. It is divided into *Annals* and *History*, the *Annals* comprehend five Books; the *History* contains eighteen, and begins in the Year 1588. *Casaubon*, who had read something of it

The Life of Hugo Grotius.

in the Year 1613, speaks well of it in a Letter written from London to Thuanus. The Judgment of the Author of the *Parrhasiana* runs thus, "We may add to Polybius, a famous Historian among the Moderns, who tho' he had been a Sufferer by the Injustice of a great Prince, relates his noble Actions as carefully as any other Historian, and speaks of him according to his Merit, without saying any thing, whereby it may appear that he had reason to complain of him; I mean the incomparable Hugo Grotius, who speaks in his History of the Netherlands of Prince Maurice de Nassau, as if he had never been ill treated by him; this is a remarkable Instance of Impartiality, which shews that it is not impossible to overcome one's Passion, and speak well of one's Enemies, as several People fancy, who judge of others by themselves". The Author who observes this fine Passage in Grotius's History, did it not out of Flattery, for he blames him afterward for a Thing that deserves to

be blamed; he does not approve *Grotius's* Style, and shews thereby that he is a Man of a good Taste. "None, says
"he, of those who spoke well at *Athens*,
"and at *Rome*, express'd himself so ob-
"scurely in Conversation, as *Thucydides*
"and *Tacitus* did in their Histories;
"doubtless they had a mind to raise
"themselves above common Use, and
"thereby they fell into that Obscurity
"for which they are justly reprov'd.
"It cannot be denied they have an af-
"fected Style, and that they hoped to
"recommend their Histories as it were
"by a Manly Eloquence, whereby it
"seems that many things are expressed
"in few Words, and raised above the
"Capacity of the Vulgar; I cannot ap-
"prehend why some Learned Men under-
"took to imitate them, as *Hugo Grotius*,
"and *Dionysius Vossius* in his Transla-
"tion of *Rheide's* History, and how
"they could relish such a Style; for
"certainly good Thoughts need not be
"obscure to be approved by good Judges;
"and when a Reader is obliged to stop

“ continually, in order to look for the
“ Sense, he does not think himself in
“ the least obliged to an Historian who
“ gives him the Trouble; this is the
“ Reason why some Histories, tho’ excel-
“ lent as to the Matter, are read by few
“ People; whereas if those Historians de-
“ signed to write for the Instruction of
“ those who have a sufficient Knowledge
“ of the *Latin* Tongue to read a History
“ with Pleasure, they should endeavour to
“ make themselves easily understood, and
“ useful to as many People as ever they
“ could. The more a History deserves
“ to be read by reason of the Events
“ contained in it, the more it deserves to
“ be of a general Use; the Authority of
“ the Ancients who neglected the clear-
“ ness of the Style, cannot justify the
“ Moderns, who have imitated them
“ contrary to the Reasons I have men-
“ tioned, or rather contrary to good
“ Sense. There is nothing in *Tacitus*
“ that less deserves to be imitated, than
“ his too concise, and consequently ob-
“ scure Style; I am sorry *Grotius* was one
“ of

“ of those who did not avoid it, it makes
“ the Translation of his Writings more dif-
“ ficult, and his Thoughts more obscure.

But his Book of *the Rights of War and Peace* was the *Master-piece* of his Works, and therefore deserves a more particular Account; it was Printed at *Paris* in 1625, and dedicated to *Lewis XIII.* “ King *Gustavus* of *Sweden* having read and admired it, resolved to make use of the Author, whom he took to be a great *Politician* by reason of that Work; but that Prince having been kill'd at the Battle of *Lutzen* in the Year 1632, Chancellor *Oxenstern*, according to his own Inclination, and the Design of the late King *Gustavus*, nominated him to be sent Ambassador into *France* “. *Colomies* says, “ 'Tis believed that *Grotius* exhausted his Parts upon that Book, and that he might have said of it what *Casaubon* said of his Commentary upon *Perseus*, in a Letter to Mr. *Perillan* his Kinsman, which is not Printed, in *Perseo omnem ingenii conatum effudimus*; and indeed
“ that

“ that Work of *Grotius* is an excellent
 “ Piece, and I don’t wonder that it has
 “ been explained in some *German* Univer-
 “ sities Here follows the Judgment
 which *M. Bignon*, that unblameable Magi-
 strate, makes of that Book in a Letter to
Grotius, dated the 5th of *March*, 1633.
 “ I had almost forgot, says he, to thank
 “ you for your Treatise *de jure Belli*, which
 “ is as well Printed as the Subject deserves
 “ it; I have been told that a great King had
 “ it always in his Hands, and I believe ’tis
 “ true, because a very great Advantage must
 “ accrue from it, since that Book shews,
 “ that there is Reason and Justice in a Sub-
 “ ject, which is thought to consist only in
 “ Confusion and Injustice; those who
 “ read it will learn the true Maxims of
 “ the *Christian* Policy, which are the
 “ solid Foundations of all Governments;
 “ I have read it again with a wonder-
 “ ful Pleasure. They did not make the
 same Judgment of it at *Rome*; where it was
 placed among Prohibited Books the 4th
 of *February* 1671. *M. Chauvin’s* Me-
 morial concerning the Fate and Import-
 tance

tance of that Work is so curious, that we cannot forbear transcribing some things out of it. It informs us that *Grotius* undertook to write that Book at the Solicitation of the famous *Peireskius*. He himself says so, in a Letter he writ to him, when he presented him with the Copy of that Work. "The Subject of
" it was thought to be so important
" and useful, that it gave Occasion to
" make a particular Science of it; for
" the Explication of which, some Professors have been appointed on purpose
" in the Universities. *Charles Lewis*, Elector *Palatine*, did so highly value
" that Book, that he thought fit it should
" serve as a Text to the Doctrine concerning the Right of Nature, and
" the Law of Nations, and in order to
" teach it he appointed *M. de Puffendorf*
" in the University of *Heidelberg*; and in
" Imitation of that Prince, the like Settlements have been made in other Universities. It does not appear that
" any Body criticiz'd upon this Work of
" *Grotius* during his Life-time;" but when
he

he was dead it occasion'd many Disputes, and was publish'd over all the World of Letters, and commented upon by the most *Learned* of all Nations. It came out at last, *cum Notis Variorum*, by which means *our Author*, within 50 Years after his Death, obtained an Honour, which was not bestow'd upon the *Ancients* till after *many Ages*.

Thus have we given the *History* of this *great Man*, taken from the best Accounts that have contributed to derive his Memory to our Times; but as an *Improvement* of his Character receive the Testimony of *Salmasius*, one of his Enemies, in a Letter to him, *You have laid but a small Obligation upon the Cardinals, and upon my self likewise, by bestowing a Title upon me, which is peculiar to the most Eminent Grotius; For why should not I call him so, whom I had rather resemble, than enjoy the Wealth, the Purple, and Grandeur of the Sacred College.*

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Passages

Passages of Scripture Illustrated, Examined or Cor- rected in this Treatise.

The *First Figure* imports the *Volume*, the
other the *Page*.

Gen. iv. 14.

BEHOLD thou hast driven me out this Day
from the Face of the Earth; and from thy
Face shall I be hid, and I shall be a Fugitive
and a Vagabond in the Earth, and it shall come to
pass that every one that findeth me shall slay me.
1. 72.

Gen. ix. 24.

If Cain shall be avenged sevenfold, truly Lamech
seventy and sevenfold. 1. 73.

Gen. ix. 5.

And surely your Blood of your Lives will I require;
at the Hand of every Beast will I require it; and at
the Hand of Man, at the Hand of every Man's Bro-
ther will I require the Life of him. 1. 71.

Gen. ix. 6.

Whoso sheddeth Man's Blood, by Man shall his
Blood be shed; for in the Image of God made he
Man. ibid.

Gen. xiv.

16,

17.

And he brought back all the Goods, and also brought
again his Brother Lot, and his Goods and the Wo-
men also, and the People. And the King of Sodom
went out to meet him (after his Return from the
Slaughter of Chedorlaomer, and of the Kings that
were with him) at the Valley of Shaveh, which is
the King's Dale. 3. 255.

Parables of Scripture explain'd.

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And blessed be the most high God, which both de- Gen. xiv. 1
 livered thine Enemies into thy Hand; and he gave 10.
 him Tithe of all. 1. 67. 3. 91.

And Abraham drew near, and said, wilt thou al- Gen. xviii.
 so destroy the Righteous with the Wicked? 23.

And yet indeed she is my Sister; she is the Daugh- Gen. xxi.
 ter of my Father, but not the Daughter of my Mo- 12.
 ther; and she became my Wife. 3. 14.

But unto the Sons of the Concubines which A- Gen. xxv.
 braham had, Abraham gave Gifts, and sent them 6.
 away from Isaac his Son (while he yet lived) East- xxviii.
 ward, unto the East Country. 2. 164.

And it came to pass about three Months after, that Gen.
 it was told Judah, saying, Tamar thy Daughter-in- xxxviii. 24.
 Law hath played the Harlot; and also behold she is xxxviii. 24.
 with Child by Whoredom and Judah said, Bring 8c.
 her forth, and let her be burnt. 1. 74.

And the Lord said unto Moses, Write this for a Exod. xvii.
 Memorial in a Book, and rehearse it in the Ears of 14.
 Joshua, for I will utterly put out the Remem- 1.
 berance of Amalek from under Heaven. 1. 67.

I am the Lord thy God, which have brought Thee Exod. xxi.
 out of the Land of Egypt, out of the House of Bon- 2.
 dage. Thou shalt have no other Gods before me. 3.
 Thou shalt not make unto thee any graven Image, &c. 4. &c.
 2. 517, 518.

But if a Man come presumptuously upon his Neigh- Exod. xxi.
 bour, to slay him with Guile; thou shalt take him 14.
 from mine Altar, that he may die. 2. 550.

If a Thief be found breaking up, and be smitten Exod. xxii.
 that he die, there shall be no Blood shed for him. 2.
 But if the Sun be risen upon him, there shall be 2.
 Blood shed for him. 1. 117. 2. 18.

Defile not you your selves in any of these things: Levit. xviii.
 for in all these the Nations are defiled which I cast 24.
 out before you. And the Land is defiled; therefore 25.
 I will visit the Iniquity thereof upon it, and the Land it self 27.
 will visit her Inhabitants. (For all these Abomi- 27.
 nations have the Men of the Land done, which were 27.
 before you, and the Land is defiled.) 2. 112.

Doubtless

- Num. xiv. 300. *Doubtless ye shall not come into the Land concerning which I swore to make you dwell therein, save Caleb the Son of Jephunneh, and Joshua the Son of Nun. 2. 295.*
- Deut. xix. 19. *Then shall ye do unto him, as he had thought to have done unto his Brother. 2. 499.*
- Deut. xx. 18. *When thou comest nigh unto a City, to fight against it, then proclaim Peace unto it. 3. 54.*
- Deut. xx. 19. *Thus shalt thou do unto all the Cities which are very far off from Thee, which are not of the Cities of these Nations. 1. 68.*
- Deut. xx. 19. *When thou shalt besiege a City a long Time, in making War against it to take it, thou shalt not destroy the Trees thereof. 3. 209.*
- Deut. xxiii. 28. *Thou shalt not revile the Gods nor curse the Ruler of thy People. 1. 195.*
- Deut. xxiii. 6. *Thou shalt not seek their Peace nor their Prosperity all thy Days for ever. 2. 345.*
- Josh. ii. 15. *And Joshua made Peace with them, and made a League with them, to let them live; and the Princes of the Congregation swore unto them. 2. 296.*
- Judg. iii. 15. *But when the Children of Israel Cried unto the Lord, the Lord raised them up a Deliverer, Ehud the Son of Geza, a Benjamite, a Man left-handed: and by him the Children of Israel sent a Present unto Eglon the King of Moab. 1. 209.*
- Sam. xiv. 33. *And blessed be thy Advice, and blessed be thou, which hast kept me this Day from coming to shed Blood, and from avenging my self with my own Hand. 2. 300.*
- 2 Kings iii. 19. *And ye shall smite every fenced City, and every choice City, and shall fell every good Tree. 3. 210.*
- 2 Kings vi. 18. *And Elisha said unto them, this is not the way, neither is this the City. 3. 29.*
- 2 Kings viii. 18. *And Elisha said unto him, go say unto him, Thou mayst certainly recover: howbeit the Lord hath said, this he shall surely die.*
- 1 Chron. xxvi. 32. *And his Brethren, Men of Valour, were two thousand and four hundred chief Fathers, when King David made Rulers over the Reubenites, the Gadites, and the half Tribe of Manassah, for every Matter per-*

pertaining to God and Affairs of the King. 1. 164.

And Jehu the Son of Hinani the Seer, went out to meet him, and said to King Jehoshaphat, shouldest thou help the Ungodly, and love them that hate the Lord? therefore is Wrath upon thee from before the Lord. 2. 346.

Be wise now therefore O ye Kings, be instructed ye Judges of the Earth: serve the Lord with Fear.

The Lord hath made all things for himself: yea even the Wicked for the Day of Evil. 2. 445.

Then shall the Dust return to the Earth as it was: and the Spirit shall return unto God who gave it. 2. 423.

They shall beat their Swords into Plowshares and their Spears into Pruning Hooks. Nation shall not lift up Sword against Nation, neither shall they learn War any more. 1. 88.

Then Zedekiah the King, said, behold, he is in your Hand: for the King is not he that can do any thing against you. 1. 164.

Then thou shalt say unto them, I presented my Supplication before the King, that he would not cause me to return to Jonathan's House to die there. 3. 14.

All his Righteousness that he hath done shall not be mentioned: in his Trespas that he hath trespassed, and in his Sin that he hath sinned, in them shall he die. 2. 404.

Then I turned and lift up mine Eyes and looked, and behold a Flying Roll. And he said unto me what seest thou? And I answer'd, I see a Flying Roll, the Length thereof is twenty Cubits, and the Breadth thereof ten Cubits. Then said he unto me, This is the Curse that goeth forth over the Face of the whole Earth: for every one that stealeth shall be cut off as on this side, according to it: and every one that sweareth shall be cut off as on that side, according to it. I will bring it forth, saith the Lord of Hosts, and it shall enter into the House of the Thief, and into the House of him that sweareth falsely by my Name.

Passages of Scripture explained.

- Name: and it shall remain in the midst of his House, and shall consume it.* 2. 290. In the Notes letter (b).
 Matt. iii. 4. *Repent ye, for the Kingdom of Heaven is at hand.*
 iv. 17. 1. 81.
 Matt. v. 17. *Think not that I am come to destroy the Law or the Prophets: I am not come to destroy but to fulfill.*
 1. 83.
 Matt. v. 21. *Ye have heard, that it was said by them of old Time, thou shalt not kill: and whosoever shall kill, shall be in Danger of the Judgment. But I say unto you, &c.* 1. 76.
 Matt. v. 37. *Let your Communication be Yea, yea, Nay, nay.*
 2. 314.
 Matt. v. 38. *Ye have heard that it hath been said, An Eye for an Eye, and a Tooth for a Tooth; but I say unto you, resist not Evil; but whosoever shall smite thee on thy Right Cheek turn to him the other also.* 1. 89.
 Matt. v. 40. *And if any Man will sue thee at the Law, and take away thy Coat, let him have thy Cloak also.* 1. 90.
 Matt. v. 41. *And whosoever shall compel thee to go with him one mile, go with him two.* 1. 91.
 Matt. v. 42. *Give to him that asketh thee, and from him that would borrow of thee, turn not thou away.* ibid.
 Matt. v. 43. *Ye have heard that it hath been said, Thou shalt love thy Neighbour and hate thine Enemy. But I say unto you, Love your Enemies, bless them that curse you, do good to them that hate you, and pray for them who despitefully use you and persecute you.*
 1. 94.
 Matt. xxiii. 21. *And who so shall swear by the Temple, swearing by it, and by him that dwelleth therein.* 2. 304.
 Matt. xxiv. 51. *And shall cut him asunder, and appoint him his Portion with the Hypocrites.* 2. 314.
 Matt. xxvi. 29. *I will not drink henceforth of this Fruit of the Vine, until that Day that I drink it new with you in my Father's Kingdom.* 3. 21.
 Matt. xxvi. 52. *All they that take the Sword shall perish with the Sword.* 1. 102.
 Mark iv. *Hearing they may hear and not understand.* 3. 215.
 Mark vi. 48. *And he saw them toying in rowing: (for the Wind was contrary unto them) and about the fourth Watch*
 of

Passages of Scripture explained.

115

of the Night he cometh unto them, walking upon the Sea, and would have passed by them. 3. 16.

Thou knowest the Commandments, do not commit Adultery, do not Steal, do not bear false Witness, defraud not. 2. 506.

That all the World should be taxed. 2. 582.

Go out into the high-ways and hedges and compel them to come in. 2. 527.

Take heed to your selves: If thy Brother trespass against thee rebuke him; and if he repent forgive him. 2. 469.

That ye may eat and drink at my Table in my Kingdom, and sit on Thrones, judging the twelve Tribes of Israel. 3. 21.

And they drew nigh unto the Village whither they went, and he made as though he would have gone further. 3. 16.

But they constrain'd him. 2. 528.

Destroy this Temple and in three Days I will raise it up. 3. 21.

Then saith the Woman of Samaria unto him, how is it that thou being a Jew, askest Drink of me, which am a Woman of Samaria? for the Jews have no dealings with the Samaritans. 2. 344.

So when they continued asking him, he lift up himself, and said unto them, he that is without sin among you, let him first cast a stone at her. 2. 443.

Our Friend Lazarus sleepeth. 3. 21.

Jesus answered, my Kingdom is not of this World: if my Kingdom were of this World, then would my Servants fight; that I should not be delivered to the Jews: but now is my Kingdom not from hence. 2. 584.

Him would Paul have to go forth with him; and took and Circumcised him, because of the Jews which were in those Quarters: for they knew all that his Father was a Greek. 3. 16.

And some of them believed, and consorted with Paul and Silas: and of the devout Greeks a great Multitude, and of the chief Women not a few. 1. 55.

Who changed the Truth of God into a Lie, and wor-

Mark xvi. 19.

Luke ii. 1.

Luke xiv. 23.

Luke xvii. 3.

Luke xxii. 30.

Luke xxiv. 28.

Luke xxix. 22.

John ii. 19.

John iv. 9.

John viii. 7.

John xi. 11.

John xviii. 36.

Acts xvi. 3.

Acts xvi. 3.

Acts xvi. 3.

Acts xvi. 3.

Rom. i. 25.

- worshipped and served the Creature more than the Creator who is blessed for ever. 2. 523.
- Rom. iii. By what Law? of Works? 1. 77.
- Rom. xii. Recompence to no Man Evil for Evil. Provide things honest in the sight of all Men. If it be possible, as much as lieth in you, live Peaceably with all Men. Dearly Beloved, Avenge not your selves, but rather give Place unto Wrath; for it is written, Vengeance is mine; I will repay, saith the Lord. Therefore if thine Enemy hunger, feed him; if he thirst give him Drink: for in so doing thou shalt heap Coals of Fire on his Head. Be not overcome of Evil, but overcome Evil with Good. 1. 96, 97.
- Rom. xiii. Let every Soul be subject unto the higher Powers. 1. 97.
- Rom. xiii. Who soever therefore resisteth the Power, resisteth the Ordinance of God: and they that resist, shall receive to themselves Damnation. 1. 181.
- Rom. xiii. For he is the Minister of God to thee for Good. But if thou do that which is Evil be afraid; for he beareth not the Sword in vain; For he is the Minister of God, a Revenger to execute Wrath upon them that do Evil. 1. 79, 181.
- Rom. xiv. And he that doubteth, is damned if he eat, because he eateth not of Faith: for whatsoever is not of Faith, is Sin. 2. 590.
- 1 Cor. v. 1. Such Fornication, as is not so much as named amongst the Gentiles, that one should have his Father's Wife. 2. 112.
- 1 Cor. vii. Art thou called being a Servant? care not for it, 2. 139.
- 1 Cor. vii. But if any Man think that he becometh himself uncomely toward his Virgin, if she pass the Flower of her Age, and need so require, let him do what he will, he sinneth not, let them marry. 2. 106.
- 1 Cor. xi. Doth not even Nature it self teach you, that if a Man hath long Hair, it is a shame? 2. 187.
- 1 Cor. 17. Did I use Lightness? That with me there should be Yea, Yea, and Nay, Nay? But as God is true, our Word toward you, was not Yea and Nay. 2. 391.

Passages of Scripture explained.

221

For all the Promises of God in Him are Yea, and in Him Amen. 2. 215.

Though we walk in the Flesh, we do not War after the Flesh; for the Weapons of our Warfare are not Carnal, but mighty through God to the pulling down of strong Holds. 1. 98.

But I fear lest by any means, as the Serpent beguiled Eve through his subtilty, so your minds should be corrupted from the Simplicity that is in Christ. 2. 27.

Children ought not to lay up for the Parents, but the Parents for the Children. 2. 160.

The Law was our School-Master to bring us unto Christ. 1. 61.

Now I say, that the Heir as long as he is a Child, differeth nothing from a Servant, though he be Lord of all. 2. 58.

Among whom also we all had our Conversation in times past, in the Lusts of our Flesh, fulfilling the Desires of the Flesh, and of the Mind, and were by nature the Children of Wrath, even as others. 2. 287.

Put on the whole Armour of God, that ye may be able to stand against the wiles of the Devil. For we wrestle not against Flesh and Blood, but against Principalities and Powers, against the Rulers of the Darkness of this World, against Spiritual Wickedness in high Places. 1. 99.

I exhort therefore, that first of all, Supplications, Prayers, Intercessions, and giving of Thanks be made for all Men; for Kings and for all that are in Authority, that we may lead a quiet and peaceable Life in all Godliness and Honesty; for this is Good and acceptable in the sight of God our Saviour, who would have all Men to be saved, and to come to the knowledge of the Truth. 1. 78.

Exhort Servants to be Obedient to their own Masters, and to please them well in all things. 2. 139.

Wherein God willing more abundantly to show unto the Heirs of Promise the Immutability of his Counsel, confirm'd it by an Oath: that by two Immutables things, in which it was impossible for God to lie, we might have a strong Consolation. 2. 294.

Passages of Scripture explain'd.

Hebr. vii.
16.

Who is made not after the Law of a Carnal Com-
mandment. 1. 77.

Hebr. vii.
19.

For the Law made nothing perfect, but the bringing
in of a better hope did, by the which we draw nigh
unto God. 1. 16.

Hebr. viii.
7.

For if that first Covenant had been Faultless, then
should no Place have been sought for the second. ibid.

Hebr. xi. 6.

He that cometh to God must believe that he is, and
that he is a Rewarder of them that diligently seek him.

2. 510.

James i.
15.

Then when Lust hath conceived it bringeth forth
Sin. 2. 491.

James iv.
1.

From whence come Wars and Fightings among you?
come they not hence even of your Lusts, that War in
your Members? Ye lust and have not, ye kill and de-
fire to have and cannot obtain, ye fight and War, &c.

1. 99.

James v.
12.

But above all things, my Brethren, swear not, nei-
ther by Heaven, neither by the Earth, neither by any
other Oath, but let your yea, be yea, and your nay,
nay, lest you fall into Condemnation or Hypocrisie.

2. 314.

1 Pet. ii. 16.

As Free and not using your Liberty for a Cloak of
Maliciousness, but as the Servants of God. 2. 139.

1 Pet. ii. 17.

Honour the King. Servants be subject to your Ma-
sters with all Fear, not only to the Good and Gentle;

18.

but also to the Froward; for this is Thank-worthy; if

19.

a Man for Conscience toward God endure Grief,

20.

suffering Wrongfully. For what Glory is it, if when

ye be buffeted for your Faults, ye shall take it Pa-

tiently? But if when ye do well and suffer for it;

ye take it Patiently, this is acceptable with God. 1. 84.

1 John ii.
16.

The Lust of the Flesh, the Lust of the Eyes and the
Pride of Life. 2. 492.

1 John iii.
16.

We ought to lay down our Lives for the Brethren.
1. 76.

1 John v.
16.

There is a Sin unto Death. 2. 452.

H. GROTIIUS;



H G R O T I U S

TO

His Most Christian Majesty

L E W I S XIII

King of *France* and *Navarr.*



HIS Book presumes, most Illustrious Prince, to intitle it self to Your great Name, from a Confidence, not of it self, or its Author, but of the Subject Matter of it, which is *Justice*; a Virtue in so distinguishing a Manner Yours, that by it, both from Your own Merits, and the general Consent of Mankind, You have acquired a Title worthy so great a King.

B

and

and are now every where known by the Name of JUST, no less than that of LEWIS. It was the height of Glory to the *Roman* Generals, to be Surnamed from some of their conquered Countries, as *Crete*, *Numidia*, *Africa*, *Asia*, and the like. But how much more Glorious Your Surname, by which you are declared the irreconcilable Enemy, and perpetual Conqueror, not of any Nation or Man, but of Injustice? It was esteemed a great thing among the *Aegyptian* Kings, for one of them to be stiled, the Lover of his Father, another the Lover of his Mother, another of his Brother. But how far short these of Your Name, which comprehends not only those, but every thing else that can be conceived Beautiful and Virtuous? You are JUST, as you Honour the Memory of the great King Your Father by imitating him: JUST, as You instruct Your Brother by all imaginable Methods, but none more than that of Your own Example: JUST, as You procure the greatest Matches for Your Sisters: JUST, as You revive the Laws almost dead, and, to the utmost of Your Power, oppose the growing Wickedness of the Age: JUST, but at the same time Merciful too, as You deprive Your Subjects, whom the Ignorance of Your Goodness had caused to Transgress the Bounds of their Duty, of nothing but

DEDICATION.

3

but the Liberty of offending, nor use any Violence to those who differ from You in Matters of Religion: JUST, and at the same time Compassionate, as You relieve by Your Authority oppressed Nations, and distressed Princes, and controul the Exorbitant Power of Fortune. Which singular Beneficence in You, as near the Divine as Human Nature can admit, obliges me even in this publick Address to return You my private Thanks. For as the coelestial Bodies not only influence the great Parts of the World, but also suffer their Virtues to be communicated even to every individual Animal; so you, like a Star of most benign Influence to the Earth, not contented to have raised up dejected Princes, or given Succour to Nations, have condescended to give Protection and Comfort to me also, when ill-treated by my Native Country. To Your publick Actions You have, to compleat the Measure of Justice, added such Innocence and Sanctity of Life, as deserves the Admiration, not of Men only, but of the Blessed above. For who of the meanest People, or even of those who have sequestred themselves from the Conversation of the World, attains to that Perfection of Purity and Virtue, as you whom the Splendor of Fortune exposes daily to innumerable Charms of Vice? But how great is it to attain that in a multiplicity of

NOY

B 2

Businels,

Business, in a Crowd, in a Court amongst so many so various Examples of Vice, which others scarce are able, often are not able to do in Solitude? This is to merit the Name not of JUST only but of *Saint* also, and that in this Life, which the Piety of the Age attributed to your Ancestors *Charles the Great*, and *Lewis*, only after their Deaths: This is to deserve the Title of *most Christian*, not by Descent, but your own proper Right. But as there is no part of Justice which does not belong to You, so that which concerns the Subject of this Book, *viz.* the Affairs of Peace and War, is properly Yours, as You are a King, and especially as King of *France*. Vast is Your Dominion, which extends from Sea to Sea, and comprehends so many spacious and happy Provinces; but it is a greater Dominion than this, not to desire others Dominions. Worthy is this of Your Piety, worthy of Your high Pitch of Grandeur, not to attempt the Invasion of any Man's Right by Force of Arms, or the Alteration of Ancient Limits; but together with War, to carry on Negotiations of Peace; nor to begin it, but with a Desire of bringing it to a speedy Conclusion. When it shall please God to call You to his Kingdom, which alone is better than that which You now possess, how becoming, how glorious, how joyful to the Conscience will it be for
You

DEDICATION.

5

You to be able to say with Boldness; This Sword, received from Thee for the Safe-guard of Justice, I restore again pure, innocent, stained with no Man's Blood, rashly shed? Thus it shall be, that the Rules which we now seek for in Books, shall hereafter be learned from Your Actions, as the most perfect Pattern. Which Thing it self, though of great Importance, yet the Christian World presumes to require some Thing still greater from you; that is, that Wars every where ceasing, Peace may be restored, not only to Civil States, but to the Churches; and our Age submits it self to be modeled after the Pattern of the Apostolical Age, in which all unanimously acknowledge the Christian Faith to have been true and incorrupted.

The Minds of Men, now grown weary of Dissention, are encouraged to hope for this, as the Effect of the Friendship lately contracted, and by the happy Marriage of Your Sister confirmed, between You and the King of *Great Britain*, a Prince Eminent for his great Wisdom and ardent Love for the Peace of the Church. A Work indeed of vast Difficulty, by Reason of the growing Animosity of Parties: But of two such great Kings nothing is Worthy but what is Difficult, and to all

B 3

others

others impracticable. The God of Peace
and Justice grant to Your Majesty, most
Just and Peaceable Prince, together with
all other Happiness, the Honour of accom-
plishing this great Work. MDCXXV.

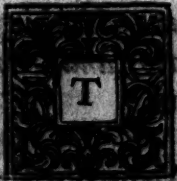


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THE PREFACE

To the Three Books of the Law of WAR and PEACE.

1.  *HE Civil Law, whether that of the Romans, or of any other People, many have undertaken, either to explain by Commentaries, or to draw up into short Abridgments; But that Law, which is common to many Nations and Rulers of Nations, whether deriv'd from Nature, or instituted by Divine Commands, or introduced by Custom and tacit Consent, few have touch'd upon, and none hitherto treated of universally and methodically, though it is the Interest of Mankind that it should be done.*

1. The
LAW of
Nations.

2. Cicero rightly commended the Excellence of this Science, in the Business of Leagues, Covenants, Conditions of Agreement, between diverse People, Princes and foreign Nations, and in short, in all Affairs of War and Peace. And Euripides prefers this Science before the Knowledge of all other Things, whether Divine or Humane, when he makes Helen say thus to Theone:

Of War
and Peace.

The AUTHOR's

'Twou'd be a base Reproach
To you, who know th' Affairs present and future
Of Men and Gods, not to know what Justice is.

Some
think In-
terest alone
the Rule of
Justice.

3. *And indeed this Work is the more necessary, since we find some, both in this and in former Ages, so far despising this Part of Justice, as if it were nothing but an empty Name. The Saying of Euphemus (a) in Thucydides is almost in every ones Mouth, To a King or City Imperial, nothing is unjust that is Profitable. Not unlike to which is this, That in the height of Fortune the stronger is the Juster side; and, That no Commonwealth can be govern'd without Injustice. And again, That in most of the Disputes between foreign States and Princes, the longest Sword must determine the Cause. Neither is this the Opinion of the vulgar only, That War is a Stranger to all Justice, but many Sayings rashly uttered, by Men of reputed Wisdom and Learning, give strength to the Opinion. Nothing is more frequent than the mentioning of Laws and Arms, as opposite to one another. Thus Ennius,*

They gain their Right, by Force of Arms, not Law.

And Horace thus describes the fierceness of Achilles:

Laws as not made for him he proudly scorns,
And every Thing demands by Force of Arms.

Antigonus, though old, laugh'd at the Man, who presented him with a Treatise concerning Justice, at the very Time he was besieging his Enemies Cities.

And

(a) In Thucydides.] See Book vi. To the same Purpose in B. v. the Athenians, than the most powerful State in Greece, tell the Melians, That in Reason those Things are just, which an equal Necessity obliges both Sides to submit to; but otherwise the weaker Party must submit to whatever the stronger imposes.

P R E F A C E.

9

And Marius said (b) he could not bear the Voice of the Laws for the clashing of Arms. Even the modest bashful Pompey could have the Face to say, (c) Can I think of Laws, who am in Arms?

4. *Among Christian Writers we find many Sayings of the same kind; let that of Tertullian suffice for all; Fraud, Cruelty, Injustice, the proper Business of War. Now, they that are of this Opinion, will undoubtedly object against me that of the Comedian,*

You that attempt to fix by certain Rules Things so uncertain, may with like Success Strive to run mad, and yet preserve your Reason.

5. *But since it would be a vain Undertaking to treat of this kind of Law, if there is really no such thing; therefore for a Recommendation and Defence of this Work, it will be necessary to begin with a brief Confutation of this most gross Error. And that we may not engage with a Multitude at once, let us assign them an Advocate. And who more proper for this Purpose than Carneades, who arrived to such a Degree of Perfection, (the utmost his Self aimed at,) that he could argue for or against Truth, with the same Force of Eloquence? This Man having undertaken to dispute against Justice, that Part of it, especially,*

The Existence of Law asserted, against

The Objections of Carneades.

which

(b) *He could not hear.*] Lyfander in Plutarch, *showing his Sword said.* He that can manage this, is best able to dispute about the Bounds of Countries. *And Caesar in the same Author,* That Arms and Laws never flourish at the same Time. *And Seneca in B. 4. Ch. 38. of Benefits;* Princes give many Things away blindfold, especially in Times of War. So many Desires in Arms, one just Man is not able to satisfy. It is impossible to act the Part of a good Man, and a good General at the same time.

(c) *Can I think of Laws.*] Plutarch expresses this Saying of Pompey to the Mamertines thus, Will ye never make an End of reciting Laws to us, that have our Swords on? Thus does War, says Curtius B. 9. pervert the Laws of Nature.

which is the Subject of this Treatise, found no Argument stronger than this, That Laws were instituted by Men for the sake of Profit, and are often changed, as the various Tempers of People, and Exigences of the Times require; but that there is no such Thing as the Law of Nature. For all, both Men and other Creatures, are directed by Nature to seek their own Profit; and therefore either there is no Justice at all, or if there is any, it is extreme Folly, because it injures it self in consulting the Advantages of others.

1. Natural.

6. But what is here said by the Philosopher, and by the Poet after him,

By naked Nature ne'er was understood

What's just and Right.

Creech's Horace.

must by no Means be admitted. For Man is a living Creature indeed, but such a one as far excells the rest, and is in his Nature at a much greater Distance from all of them, than the most opposite Species among them are from one another; as the many Actions proper only to Mankind sufficiently demonstrate. Now among st the Faculties peculiar to Man, is his Desire of Society, that is, of a Community, not of any kind, but such as is peaceable, and according to the Capacity of his Understanding well ordered, with those of his own Kind; which Thing the Stoicks term'd (d) *ὀικειωσις*, Familiarity. Therefore the Saying, That every Creature is led by Nature to seek its own Profit, expressed thus universally, must not be granted.

7. For

(d) *ὀικειωσις*.] St. Chrysostom in his 3^d Homily upon Romans says; We have a certain natural Familiarity (*ὀικειωσις*) one with another, which is likewise maintained in some Measure even among brute Creatures. See the same Author in Ch. 1. to the Ephesians where he shews That we have the Seeds of Virtue sown in us by Nature. The Emperor M. Antoninus, who was a very great Philosopher, says, It has been of old observed, that Nature designed us for Society. Is it not manifest that the worse Things are made for the sake of the better, and the better for the sake of one another?

7. For even of the other Animals there are some that (c) in some Measure temper the Desire of their own Profit, with a Regard they have partly to that of

(c) In some Measure temper.] It is an old Proverb, one Dog does not eat another. Thus Juvenal,

Tygers with raging Tygers are at Peace.
No Savage Beast will its own Kind devour.

To this purpose is a famous Passage in Philo upon the 5th Commandment, which I will cite at large, Let Men imitate at least the Example of mute Creatures, They know how to be grateful for Kindnesses received. Dogs are the Guardians of the Houses they inhabit, and will die for their Masters upon any sudden Assault of Danger. It is said likewise that the Shepherd Dogs will go before their Flocks, in order to defend their Masters against all Danger. Is it not a base Reproach, that in performing Acts of Gratitude a Man should be excelled by a Dog, the mildest of Creatures by that which is the fiercest? But if Terrestrial Animals are not sufficient to instruct us, let us pass on to the Nature of Birds, those Aerial Travellers, that we may learn even of them what is our Duty. The Storks when they grow old, and unable to fly, rest in their Nests, while their young ones fly o'er Lands and Seas to seek Food for their aged Parents. These enjoy, as the due Reward of their old Age, Ease, Plenty of Necessaries, and even of Delicacies too; and the others comfort themselves in the Fatigues they undergo, with the Satisfaction of conscientiously discharging the Duty which Piety requires of them, together with the Expectation of like Treatment from their own Offspring, when they themselves shall grow old. Thus do they in due Time repay that necessary Debt which they contracted in their Infancy. And were it not for this mutual Piety between the Parents and their Offspring, they wou'd perish for want of Sustenance either in their Youth or old Age. Therefore 'tis Nature only that instructs them to take Care of their aged Parents, for a Requital of the Care they at first had taken of them. Those then that take no Care of their Parents, but wholly neglect them, dare they shew their Faces for shame, when they hear these Things related, considering they ought to relieve them before all others, and that especially because this is not to be looked upon as an Act of voluntary Beneficence, but the Payment of a just and necessary Debt? For the Parents have a prior Right to whatever the Children possess, because they either gave it them, or are the Causes of their procuring it. Concerning the remarkable Care of Devas about their Young, See Porphyry B. 3. of Abstinence from Animals.

to humane Understanding, is the very Fountain of that Law, which is properly so called; (h) to which belongs the Abstaining from that which is another's, and the Restitution of what we have of another's, or of the Profit we have made by it, the Obligation of fulfilling Promises, the Reparation of a Damage done through our own Default, and the Merit of Punishment among Men.

9. From this Signification of Law arises another of larger Extent. For by reason that Man above all other Creatures is endued not only with this Social Faculty of which we have spoken, but likewise with Judgment to discern Things pleasant or hurtful, and those not only present but future, and such as may prove to be so in their natural Consequences; it must therefore be agreeable to humane Nature, that according to the Measure of humane Understanding it should in these Things follow the Dictates of a well tempered Judgment, and not be corrupted either by Fear or any Allurements of present Pleasure, nor be carried away violently by inconsiderate Rashness. And whatsoever is contrary to such a Judgment is likewise under-

Teeth to render him terrible to the rest. Yet two Things Nature has given him, which might make him, who is thus naked and exposed, the strongest of all Creatures, viz. Reason and Society. Society has given him the Dominion over all other Animals. Though he is but sprung from the Earth, yet Society has made him Lord over the Creatures of another Element, and has extended his Empire over the Seas. This has checked the Violence of Diseases, given Vigour to old Age, and Comfort in Sorrow. This renders us truly valiant, since it can assist us against the Power of Fortune. Take away this and you destroy the Union of Mankind, by which human Life is sustained. But it is taken away, if the least Countenance is given to Ingratitude.

(h) *To which belongs the Abstaining.* Porphyry of Abstinence from Animals, B. 3. Justice consists in this, the Abstaining from what is another's, and the doing no Injury to those that do none to us.

understood to be contrary to the Law of Nature, that is, of humane Nature.

Impro-
perly and
more loose-
ly.

10. And to this belongs a (i) prudent Management, in distributing to every Person or Society those Things that are properly due to them, so as to prefer sometimes one of greater before one of less Wisdom, a Neighbour before a Stranger, a poor Man before one that is rich, and that according as the Merit of each Man's Actions, and the Nature of the Thing requires; which many of old take to be a part of Law properly and strictly so called; when notwithstanding that Law, properly speaking, has a quite different Nature, consisting in this, the permitting or causing another to enjoy what at present belongs to him.

11. And indeed, what we have now said wou'd take place, though we shou'd even grant, what without the greatest Wickedness cannot be granted, That there is no God, or that he takes no care of human Affairs. The contrary of which appearing to us, partly from Reason, partly from a perpetual Tradition, which many Arguments and Miracles, attested by all Ages, fully confirm; it hence follows, that God, as being our Creator, and to whom we owe our Being, and all that we have, ought to be obey'd by us in all Things without Exception, especially since he has so many ways shewn his infinite Goodness and Almighty Power; so that he is able to bestow, upon those that obey him, the greatest Rewards, and those eternal too, since he himself is eternal; and that he is willing so to do ought to be believed, and much more when he has in express Words promised it; as we Christians, convinced by undoubted Testimonies, believe he has.

12. And

(i) Prudent Management, &c.] Of this St. Ambrose treats in his first Book of Offices.

12. *And this now is another Original of Law,* ^{2. Voluntary.}
besides that of Nature, being that which proceeds (k) ^{1. Divine.}
from the free Will of God, to whom, our Understanding
infallibly assures us, we ought to be Subject: And even
the Law of Nature it self, whether it be that which
properly respects Society, or that which in a looser
Sense is so called, though it flows from the internal
Principles of Man, may notwithstanding be justly
(l) ascribed to God, because it was his Pleasure that
these Principles should be in us. And in this Sense
Chrysippus and the Stoicks said, that the Original
of Law is to be derived from no other than Jove him-
self; from which word Jove, it is probable (m) the
Latins gave it the Name Jus.

13. *There is yet this farther Reason for ascribing*
it to God, that God by the Laws which he has given,
has made these very Principles more clear and evident,
even to those who are less capable of strict Reasoning,
and has forbid the irregular Wandrings of those Pass-
ions, as being naturally perverse, which pursue the
Advantage of our selves and of others, keeping a
stricter Rein over them, because they are more violent
than the rest, and restraining them both with respect
to the End and the Manner of their Acting.

14. *Add*

(k) *From the free Will of God.] Hence that of M. Antoninus, B. ix.*
He that acts unjustly is impious.

(l) *Ascribed to God.] St. Chrysostom upon 1 Cor. xi. 3. When I*
speak of Nature, I speak of God; for God is the Author of Na-
ture. Chrysippus of Gods, B. iii. It is impossible to find any other
Beginning or Original of Justice, than Jove and common Nature.
For it ought to be derived from that Principle which affords Sub-
ject for Discursing concerning Good and Evil.

(m) *The Latins gave it the Name Jus.] Unless perhaps by cutting*
off the last Syllable, as of Offus anciently is now made Os, so of
that which was formerly Jassum, came Jus, just, and afterwards
juris, as of Papis came Papius. Of which see Cicero, B. ix.
Epist. 21.

14. Add to this, that sacred History, besides the Precepts it contains to this purpose, affords no inconsiderable Motive to social Affection, since it teaches us that all Men are descended from the same first Parents. So that in this Sense also may be truly affirmed, what Florentinus said upon another Occasion, That Nature has made us all akin: Whence it follows, that it is impious for one Man to defraud another. Parents therefore, being upon this Consideration a sort of (n) Gods among Men, may justly exact from us not an unlimited, but a certain degree of Reverence.

a Humane.

15. Again, since the fulfilling of Covenants belongs to the Law of Nature, (for it was necessary there should be some Means of obliging Men among themselves, nor yet can any other natural Means be imagined) from this very Fountain Civil Laws were derived. For those who had incorporated themselves into any Society, or subjected themselves to any one Man, or number of Men, had either expressly, or from the Nature of the Thing must be understood to have tacitly promised, that they wou'd submit to whatever either the greater part of the Society, or those on whom the Sovereign Power had been conferred, had ordained.

Civil of every City.

16. Therefore the Saying, not of Carneades only, but of others,

(o) Interest, that Spring of Just and Right,

Creech.

if

[(n) Gods among Men.] Called by Hierocles upon the Golden Vessels, Terrestrial Gods: By Philo upon the Decalogue, Visible Gods, imitating the unbegotten God, in giving Life to others: By St. Hierom, Epist. ix. The next Alliance to that of God: By Plato of Laws, B. xi. The Images of the Gods. Honour is due to Parents as to Gods, is the Sentence of Aristotle in his Nicomachean, B. ix, cap. 11.

[(o) Interest, that Spring.] Upon which place Acron, or the old Interpreter of Horace, whoever he is, observes, Horace here opposes the Precepts of the Stoicks. He has a Mind to shew that Justice is not derived from Nature, but from Profit. Against this Opinion see St. Augustin, of the Doctrine of Christ. B. iii. cap. 14.

if we speak accurately, is not true; for the Mother of Natural Law is human Nature it self, which, though even the Necessity of our Circumstances should not require it, would of it self create in us a mutual desire of Society: But the Mother of Civil Law is that very Obligation which arises from Consent, which deriving its Authority from the Law of Nature, Nature may be called as it were, the Great Grand-mother of this Law also. But to the Law of Nature Profit is annexed: For the Author of Nature was pleased, that being left to our selves we should be infirm, and want many Conveniences of Life, to the End we might more eagerly affect Society: Whereas of the Civil Law Profit was the Occasion; for that entring into Society, or that Subjection which we spoke of, began first for the sake of some Profit. And besides, those who prescribe Laws to others, usually have, or ought to have, Regard to some Profit therein.

17. But as the Laws of each City principally respect the Benefit of that City; so amongst all or most Cities, there might be, and in Fact there are, some Laws agreed on by common Consent, which respect not the Advantage of any particular Societies, but of all in general. And this is what is called the Law of Nations, when used in Distinction to the Law of Nature. This Part of Law Carneades omitted, in the Division he made of Law into Natural and Civil of each People or City; when notwithstanding, since he was to treat of the Law which is between Nations (for he added a Discourse concerning Wars and things got by War) he ought by all means to have mentioned this Law.

Of Nations;
of all
or most Ci-
ties.

18. But it is absurd in him to traduce Justice with the Name of Folly. For as, according to his own Confession, that Citizen is no Fool, who obeys the Law of his City, though out of Reverence to that Law he must and ought to pass by some things that

II. Ob-
jections
confuted.
Justice not
Folly.

might be advantageous to himself: So neither is that People or Nation foolish, who for the sake of their own particular Advantage, will not break in upon the Laws common to all Nations; for the same Reason holds good in both. For as he that violates the Laws of his Country for the sake of some present Advantage to himself, destroys that which is made for the perpetual Security of what himself or his Posterity shall be able to acquire: So that People which violates the Laws of Nature and Nations, breaks down the Bulwarks of their future Happiness and Tranquility. But besides, tho' there were no Profit to be expected from the Observation of Law, yet it wou'd be a Point of Wisdom, not of Folly, to obey the Impulse and Direction of our own Nature.

19. Therefore neither is this Saying universally true,
 'Twas Fear of Wrong that made us make our Laws:

Creech's Horace.

which one in Plato expresses thus, The Fear of receiving Injury occasioned the Invention of Laws, and it was Force that obliged Men to the Cultivating of Justice. For this Saying is applicable only to those Constitutions and Laws which were made for the better Execution of this Law: As when a number of Men finding themselves weak when taken singly and apart, do, for fear of being oppressed by those that are stronger, conspire together to establish, and with their joint Forces to defend Courts of Judicature, to the End they may be an Overmatch for those whom singly they were unable to deal with. And now in this Sense may be fitly taken what is said, That Law is that which the stronger pleases to impose; by which we may understand, that Law cannot obtain its external End, unless it has the Assistance of Force to administer it. Thus Solon did great things, as he himself boasted,

By linking Force in the same Yoke with Law.

20. Yet

P R E F A C E.

19

20. Yet neither does Law lose all its Effect, by being destitute of the Assistance of Force. For Justice brings Security to the Conscience; Injustice, Racks and Torments, such as Plato describes in the Breasts of Tyrants. Justice is approved of, Injustice condemned by the consent of all good Men. But that which is greatest of all, to this God is an Enemy, to the other a Patron, who does not so wholly reserve his Judgments for a future Life, but that he often makes the Force of them to be perceived in this, as Histories teach us by many Examples.

Justice brings Security to the Conscience.

21. But whereas many that require Justice in private Citizens, make no account of it in a whole Nation or its Ruler; the Cause of this Error is, first, that they regard nothing in Law but the Profit arising from it, a thing which is visible with Respect to private Citizens, who, taken singly, are unable to defend themselves. But great Cities, that seem to have within themselves all things necessary for their Defence and well-being, do not seem to them to stand in need of that Virtue which respects the Benefit of others, and is called Justice.

Equally concerns private Persons, Nations, and Rulers of Nations.

22. But, not to repeat what has been already said, namely, that Law was not instituted for the sake of Profit only; there is no City so strong or well provided, but what may sometimes stand in need of Foreign Assistance, either in the Business of Commerce, or to repel the joint Forces of several Foreign Nations Confederate against it. For which Reason we see Alliances desired by the most powerful Nations and Princes, the whole Force of which is destroy'd by those that confine Law within the Limits of one City only. Most true is it, that by receding from Law all things are reduced into an uncertain fluctuating State.

23. If there is no Community which can be preserved without Law, as Aristotle proved by that remarkable Instance of Robbers, certainly that likewise

which joins Mankind in general, or several Nations together in one Society, must stand in need of Law; which was observed by him who said, That a base Thing ought not to be done, even for the sake of ones Country. Aristotle inveighs severely against those, who though they wou'd not have any to govern amongst themselves, but he that has a Right to it, yet in the Governing of Foreigners think it all one whether a Man has a Right or no.

Governs
Peace,

24. A Spartan King having said, That is the most happy Commonwealth, whose Bounds were determined by Spear and Sword; the same Pompey, whom we lately mentioned on the contrary side, correcting him said, That is happy indeed, which has Justice for its Boundaries. For which he might have used the Authority of another Spartan King, who preferred Justice before military Fortitude, for this Reason, that Fortitude ought to be regulated by some sort of Justice: But if all Men were Just, they wou'd have no Occasion for that Fortitude. The Stoicks defined Fortitude it self to be the Virtue that contends for Justice. Themistius in his Oration to Valens, argues very handsomly, that Kings, if qualified according as the Rule of Wisdom requires, look upon themselves as entrusted with the Care not of one Nation only, but of all Mankind; and are, as he expresses himself, not φιλομαχέδονας Friends to the Macedonians only, or φιλορωμαίοι to the Romans, but φιλόανθρωποι to Mankind. Nothing else made the Name of Minos odious to Posterity, but his confining Equity within the Limits of his own Government.

And War;
hence the
Laws of
War.

25. But so far must we be from admitting the Conceit of some, that all Laws cease in War; that on the contrary, no War ought to be so much as begun but for the obtaining of Right; nor when begun, ought it to be carried on beyond the Measure of that Right, and in Violation of publick Faith. Demosthenes said rightly, that War is made against those who cannot be restrained

restrained in a Judicial way. For judicial Proceedings are of Force against those who are sensible of their Inability to oppose them; but against those who make or think themselves of equal Strength, Wars are undertaken; but yet certainly, to render Wars just, they are to be waged with no less Conscience, than judicial Proceedings are usually carried on.

26. Let it be granted then, that Laws must be silent in the midst of Arms, provided they are only those Laws that are Civil and Judicial, and proper for Times of Peace; but not those that are of perpetual Obligation, and are equally suited to all Times. For it was very well said of Dion Prusæensis, That between Enemies, Written, that is, Civil Laws are of no Force, but Unwritten are, that is, those which Nature dictates, or the Consent of Nations has instituted. This we are taught by that ancient Form of the Romans, These things I think must be acquired by a pure and pious War. The same ancient Romans, as Varro observed, were very slow and far from all Licentiousness in entering upon War, because they thought that no War but such as is Pious, ought to be carried on. It was the Saying of Camillus, That Wars ought to be managed with as much Justice as Valour: And of Africanus, That the Romans both begin and finish their Wars with Justice. In another you may read, There are Laws of War, as there are of Peace. Another admires Fabricius for a very great Man, and remarkable for a Virtue which is extremely difficult, Innocence in War, and who believed that there are some things, which it would be impious to practise even against an Enemy.

27. Of how great Force in Wars is the Consciousness of the Justice of the Cause, Historians every where shew, who often ascribe the Victory chiefly to this Reason. Hence the Proverbial Sayings, A Soldier's Courage rises or falls according to the Merit of

his Cause; Seldom does he return safely, who took up Arms unjustly; Hope is the Companion of a good Cause; and others to the same purpose. Nor ought any one to be moved at the prosperous Successes of unjust Attempts; for it is sufficient that the Equity of the Cause has a certain, and that very great Force towards Action, though that Force, as it happens in all human Affairs, is often hindered of its Effect, by the Opposition of other Causes. The Opinion that a War is not rashly and unjustly begun, nor unjustly carried on, is likewise very prevalent towards procuring Alliances; which Nations, as well as private Persons, stand in need of upon many Occasions. For no Man readily associates with those, who, he thinks, have Law, Justice, and Fidelity in Contempt.

III. The
Author's
Reasons
for writing
this Book.

Restrain-
ing the Li-
centious-
ness in ma-
king War.

28. Now for my Part, being fully assured, by the Reasons I have already given, that there is some Law common to all Nations, which might serve to direct when Wars are to be begun, and how to be carried on, I had many and weighty Reasons inducing me to write a Treatise upon it. I observed throughout the Christian World a Licentiousness in making War, which barbarous Nations wou'd be ashamed of: a Running to Arms upon very frivolous or rather no Occasions; which being once taken up, there remained no longer any Reverence for Law, either Divine or Humane, just as if some Fury were sent forth with a general Licence for all Manner of Wickedness.

29. The Spectacle of which monstrous Barbarity worked many, and those in no wise bad Men, up into an Opinion, that a Christian, whose principal Exercise is the loving of all Men, ought not at all to bear Arms; with whom seem to agree Johannes Ferus and our Countryman Erasmus, Men that were great Lovers of Peace both Ecclesiastical and Civil; but, I suppose, they did it upon the same view, as those have who in order to make things that are crooked Straight, usually bend them as much the other way. But this
very

very Endeavour of inclining too much to the opposite Extreme, is so far from doing Good, that it is often a great Hindrance, because Men readily discovering things that are urged too far by them, are apt to slight their Authority in other Matters, which perhaps are right. A Cure therefore was to be apply'd to both these, as well to prevent believing that Nothing, as that all Things are lawful.

30. At the same Time I was likewise willing to promote, by my private Studies, the Profession of Law, which I formerly practis'd in publick Employments with all possible Integrity; this being the only thing that was left for me to do, being unworthily banish'd my Native Country, which I have honoured with so many of my Labours. Many have before this design'd to reduce it into the Form of an Art; but none has accomplished it; nor indeed can it be done, unless those things (which has not been yet sufficiently taken Care of,) which are instituted upon extraordinary Emergencies, be duly distinguish'd from those which are Natural. For those that are Natural being always the same, may be easily collected into an Art; but those which proceed from Institution being often changed, and different in different Places, are beyond the Rules of Art, as other Collections of such Particulars are.

31. But if the Professors of true Justice would undertake to treat of the several Parts of that Law which is perpetual and natural, setting aside those which owe their Rise to Voluntary Institution, so that one for Instance would treat of *Latus*, another of *Tributes*, another of the Office of Judges, another of the Conjecture of Wills, another of the Evidence in Matters of Fact, there might at last from all the Parts collected together be a Body of Law composed.

32. What Method we thought fit to Use, we have shewn in Deed rather than in Words in this Treatise, which contains that Part of Law, which is by far the noblest.

An Endeavour to promote the Knowledge of Law by giving an Example of a Method for it.

IV. The Contents and Order of the Work.

B. I.

33. For in the first Book, after premising some Things concerning the Origin of Law, we have examined the general Question, whether any War is just; afterwards to discover the Difference between a publick and private War, our Business was to explain the Authority of the Supreme Power it self, what People may have it, what Kings, who in full, who in Part, who with a Power of alienating it, and who may have it in any other Manner. And then we were to speak of the Duty of Subjects to their Superiors.

B. II.

34. The second Boook, undertaking to explain all the Causes from whence a War may arise, shews at large, what things are common, what proper, what Right one Person may have over another, what Obligation arises from Dominion, what is the Rule of Regal Succession, what Right arises from Covenant or Contract, what the Force and Interpretation of Leagues, what of an Oath both publick and private, what may be due for a Damage done, what the Sacredness of Ambassadors, what the Right of burying the Dead, what the Nature of Punishments.

B. III.

35. The third Book treats first of what is lawful in War; and then, having distinguished that which is done with Impunity, or which is even defended as lawful among foreign Nations, from that which is really blameless, descends to the several Kinds of Peace, and all Agreements made in War.

V. The
Necessity
of Wri-
ting.

Nothing
of the an-
cient Au-
thors ex-
tant on
this Sub-
ject.

36. But I thought this Undertaking still the more worth my Pains, because, as I said before, this Subject has not been fully handled by any Body; and those who have treated of the Parts of it, have done it so, that they have left a great Deal for the Labour of others. There is nothing of this Kind extant of the ancient Philosophers, whether those of the Greeks, (amongst whom Aristotle had composed a Book intituled, δικαιώματα πολέμων, The Rights of Wars,) or those of the Primitive Christians, which was very much to be wished for. Nay, of those Books of the
anci-

ancient Romans which are wrote concerning the Fe-
cial Law, we have nothing transmitted to us but the
bare Name : Those who have made Sums of Cases of
Conscience, as they call them, have made Chapters, as
of other Things, so of War, of Promises, of an Oath,
of Reprizals.

37. I have likewise seen some particular Books con-
cerning the Law of War, some of which were writ-
ten by Divines, as Franciscus Victoria, Henricus
Gorichemus, (p) Wilhelmus Matthæi ; some by
Professors of Law, as Johannes Lupus, Franciscus
Arius, Johannes de Lignano, Martinus Laudens-
is. But upon so copious a Subject, they have all of
them said but very little, and most of them in such a
Manner, that they have, without any Order, mixed
and confounded together those Things that belong sever-
ally to the Law Natural, Divine, of Nations, Civil
and Canon.

The De-
fects of the
Moderns.

38. What was most wanting in all those, viz. Il-
lustrations from History, the most Learned Faber has
undertaken to supply in some Chapters of his Semestria,
but no farther than served his Purpose, and only by
allegding of Testimonies. The same has been done more
largely, and that by applying a Multitude of Examples
to some general Maxims laid down, by Balthazar Aya-
la, and still more largely by Albericus Gentilis,
whose Diligence, as I know it may be serviceable to
others, and confess it has been to me, so what he may
want in his manner of Instruction, in Method, in di-
stinguishing of Questions, and the several Kinds of
Laws, I leave to the Readers Judgment. I shall on-
ly say this, that in the Decision of Controversies, he is
often wont to follow either a few Examples that are
not always to be approv'd of, or even the Authority
of modern Lawyers in their Answers, not a few of
which are framed in Favour of their Clients, and not
according

(p) Wilhelmus Matthæi.] Add to these Johannes de Carthagena
published at Rome, Anno 1609.

according to the Nature of Equity and Justice. The Causes, from whence a War is denominated just or unjust, Ayala has not so much as touched upon: Gentilis has indeed described after his Manner some of the general Heads; but neither has he so much as touched upon many Kinds of Controversies, noble in themselves, and frequently happening.

1. The
Author's
Care, 1. In
proving
the Laws
of Nature.

39. We have been careful that nothing of this Kind be passed over in Silence, having likewise shewn the very Foundations upon which we build our Judgments, so that it might be easie to determin any Question that may happen to be omitted by us. It remains now, that I briefly declare with what Assistance, and with what Care I undertook this Work. My first Care was, to refer the Proofs of those things that belong to the Law of Nature to some such certain Notions, as none can deny, without doing Violence to his Judgment. For the Principles of that Law, if you rightly consider, are manifest and Self-evident, almost after the same Manner as those Things are that we perceive with our outward Senses, which do not deceive us, if the Organs are rightly disposed, and if other Things necessary are not wanting. Therefore Euripides in his *Phæniſſæ* makes Polynices, whose Cause he wou'd have to be represented apparently just, deliver himself thus:

I speak not Things hard to be understood,
But such as, founded on the Rules of Good
And Just, are known alike to Learn'd and Rude.

And he immediately adds the Judgment of the Chorus, (which consisted of Women and those too Barbarians) approving what he said.

40. I have likewise, towards the Proof of this Law, made Use of the Testimonies of Philosophers, Historians, Poets, and in the last Place, Orators; not as if they were to be implicitly believed; for it is usual with them

them to serve their own Sect, or the Argument or Cause they have undertaken; but that when many Men of different Times and Places unanimously affirm the same Thing for Truth, this ought to be ascribed to an universal Cause, which in the Questions treated of by us, can be no other than either an Inference drawn directly from the Principles of Nature, or something established by common Consent. The former shews the Law of Nature, the other the Law of Nations. The Difference between which is not to be understood from the Testimonies themselves (for the Law of Nature and of Nations are Words used every where promiscuously by Writers) but from the Quality of the Matter. For that which cannot be deduced from certain Principles in a regular Way of Reasoning, and yet appears to be every where observed, must of Consequence owe its Rise to a free and voluntary Institution.

Of Nations.

2. In distinguishing both of them, and

41. Therefore these two I alone have carefully endeavoured always to distinguish no less from one another, than from the Civil Law: And even in the Law of Nations, I have made a Distinction between that which is truly and in every Respect Law, and that which only produces a certain external Effect after the Manner of that primitive Law; so that, for Instance, it may be unlawful to resist it, or that it even ought to be every where defended with the publick Force, for the sake of some Advantage that attends it, or that some great Inconveniences may be avoided. Which Observation how necessary it is in many Respects, will appear in the following Treatise. We have been no less careful in separating the Things belonging really to Law properly and strictly so called, whence arises the Obligation of making Restitution, from those which are only said to belong to it, by Reason that the acting otherwise is repugnant to some other Dictate of right Reason. Of which Diversity of Law we have already spoken both here and above.

The Civil Law.

The Species of each

42. Among

II. Aff-
stance in
the Work.
1. Philoso-
phers. Ari-
stotle, his
Praise.

42. *Among Philosophers Aristotle deservedly holds the Sovereign Place, whether you consider his Method of treating Subjects, or the Acuteness of his Distinctions, or the Weight of his Reasons. I could only wish that this Sovereignty of his had not for some Ages past degenerated into Tyranny, so that Truth, for the Discovery of which Aristotle took so great Pains, is now oppressed by nothing more than the very Name of Aristotle. I, for my part, both in this and in all my other Writings, take to my self the Liberty of the ancient Christians, who espoused no Sect of Philosophers; not that they held with those who asserted that nothing can be known, than which there is nothing more foolish; but were of Opinion, that there was no one Sect that had discovered all Truth, nor any but what held something that was true. Therefore to collect into a Body Truth that was dispersed among a Multitude of Writers, and scattered through a Variety of Sects, this they conceived to be nothing else, but to deliver the true Christian Doctrine.*

His Faults.

43. *Among other Things, (that I may mention this by the by, as not being foreign to our Purpose,) it is not without Reason, that some of the Platonists and (q) ancient Christians seem to dissent from Aristotle in this, that he placed the very Nature of Virtue in a Mediocrity of Affections and Actions; which being once laid down, drove him to this, that of Virtues of a different Kind, as for Instance, Liberality and Parsimony, he made but one; and assigned to Truth two Opposites not equally suited to it, viz. Boasting and Dissimulation; and imposed the Name of Vice upon some Things, which either are not in Nature, or in themselves are not Vices, as, the Contempt of Pleasure and Honours, and the want of Anger against Men.*

44. *But*

(q) *Ancient Christians.*] Lactantius has largely handled this in his VIth Book of Institutions, Chap. xv, xvi, xvii.

44. But that this Foundation of his, taken universally, is not rightly laid, appears from the Instance of Justice it self, whose Opposites, too much and too little, when he cou'd not find in the Affections and their subsequent Actions, he sought for Both in the Things themselves about which Justice is conversant. Which very Thing is in the first Place to leap from one Genus to another, which he deservedly blames in others; and in the next Place, to receive less than ones Due may indeed happen to be a Vice, when the Circumstances of himself or his Family cannot allow of any Abatement; but certainly it cannot be repugnant to Justice, since it consists in abstaining wholly from that which is another Man's. Like to which Mistake is that of his not allowing Adultery proceeding from Lust, and Murder from Anger, to belong properly to Injustice: Whereas the very Nature of Injustice consists in nothing else, but in the Usurping of that which is another's; nor does it signifie, whether it proceeds from Avarice, or Lust, or Anger, or imprudent Pity, or from an Ambition to excel, which is usually the Occasion of the greatest Injuries. For to be above all Temptations of what Kind soever, and that for this only Reason, viz. the preserving of Humane Society inviolable, is indeed the proper Business of Justice.

45. To return from this Digression, true indeed it is, that to some Virtues it happens, that they moderate the Affections, yet not for the Reason, that it is the proper and perpetual Office of all Virtue to do so; but because right Reason, which Virtue always follows, prescribes a Measure to be followed in some Things; in others it excites us to the utmost we are capable of. We cannot, for Instance, worship God too much; for the Crime of Superstition consists not in worshipping God too much, but in worshipping him perversely. Neither can we too much desire eternal Happiness, nor too much dread eternal Misery, nor too much hate Sin. It is truly said of * Gellius, There are some things so large

All Virtue
has not
Vice in
Excess.

Consists
often in
the utmost
we are ca-
pable of.

* B. 4. c. 9.

large as to admit of no Bounds, and the greater and more extensive they are, the greater Praise they deserve. Lactantius, after having discoursed largely on the Passions, says, In the Moderating of these Wisdom is not concerned, but in the Causes of them: For the Passions are moved by Things extrinſick to us: Neither ought a Restraint to be put principally upon them, because it is possible for them to be very little moved with the greatest Crime, and to be moved to the height without any Crime at all. Our Purpose is to set a high Value upon Aristotle, but so as to reserve to our selves the same Liberty which he himself took with his Masters, for the sake of finding Truth.

Histories. 46. Histories have a double Use with respect to the Subject we are upon, for they supply us both with Examples and Judgments. Examples, the better the Times and the People were, are of so much the greater Authority; for which Reason we have preferred those of the ancient Grecians and Romans before others. Nor are the Judgments we meet with in Histories to be despised, especially when they agree: For the Law of Nature, as we have already said, is in some Measure proved from hence, but of the Law of Nations there is no other Proof but this.

Poets, Orators. 47. The Opinions of Poets and Orators are not of so great Weight: And we often make use of them, not so much for the sake of building any thing upon them, as that their Expressions may add an Ornament to what we have a mind to say.

II. Sacred Books. 48. The Authority of those Books which Men inspired by God, either writ or approved of, I often use, but with a difference of the Old and New Law. Some there are who urge the Old Law for the very Law of Nature, but they are undoubtedly in the wrong: For many things in it proceed from the Free Will of God, which yet is never repugnant to the Law of Nature it self; and so far an Argument may be rightly

I. The Old Testament.

rightly drawn from it; provided we carefully distinguish the Law of God, which God sometimes executes by Men, from the Law which Men observe among themselves. We have therefore avoided, as much as we cou'd, both this Error, and also another contrary to it, viz. that since the Promulgation of the New Testament the Old one is of no use. We are of a contrary Opinion, both upon account of what we have said already, and also because the Nature of the New Testament is such, that whatever are the Precepts in Old Testament, relating to Virtue and good Manners, the same, or greater, are enjoined by the New also: And in this manner we see the Testimonies of the Old Testament made use of by the Writers among the Primitive Christians.

49. But to understand the Sense of the Books of the Old Testament, the Hebrew Writers may afford us no little Assistance, those especially who were thoroughly acquainted with the Language and Manners of their Country.

The Hebrew Writers.

50. The New Testament I use for this purpose, that I may shew, what cannot be elsewhere learned, what is lawful for Christians to do; which thing it self, I have notwithstanding, contrary to what most do, distinguished from the Law of Nature; as being fully assured, that in that most holy Law a greater Sanctity is enjoined us, than the meer Law of Nature in it self requires. Nor have I for all that omitted observing, what things in it are rather recommended to us than commanded, to the intent we may know, that to transgress the Commands is Wickedness, and renders us liable to be punished; but to aim at the highest Perfection, at what is but barely recommended, is the part of a generous Mind, and that will not fail of a proportionable Reward.

2. The New Testament.

51. Synodical Canons that are orthodox, are Collections made from general Sayings of the Divine Law, fitted to particular Cases that happen: These likewise

3. The Canons of Councils.

wise either shew what the Divine Law Commands, or exhort us to what God Recommends. And this is the Office of the true Christian Church, to deliver to us those things that are delivered to her of God, and in the same manner as they are delivered. But even the Customs likewise that were received or commended amongst those ancient Christians, who maintained the Dignity of so high a Title, have deservedly the Force of Canons. The next in Authority to these, are those who were famous in their Times for their Christian Piety and Learning, and were not observed to maintain any gross Error: For even what these assert with great Positiveness, as if they were certain of it, ought to have no little Weight in interpreting the Places that seem obscure in Holy Scripture, and that the more, by how much the more there are that consent in the same thing, and the nearer they are to the Times of the first Purity, when as yet neither Dominion, nor Faction, was able to corrupt the primitive Truth.

4. The Manners and Customs of the first Christians.

5. Both the Writings and the Consent of the Fathers.

6. Schoolmen.

52. The Schoolmen that succeeded these, give us many Proofs of their great Capacities; but their Misfortune was to live in unhappy Times, when good Learning was not known: The less wonder then, that among many things, in their Writings commendable, some Things are pardonable. And yet when they agree in Matters of Morality, they seldom err, as being quick in discerning those things that are blamable in the Sayings of others; and even in this their prevailing Humour of contradicting, they set us a laudable Pattern of Modesty, as disputing against one another with Arguments, and not, as the Custom of late has been, to the Corruption of Learning, with Reproaches, the base Offspring of an impotent Mind.

III. Lawyers.

53. Of those that profess the Knowledge of the Roman Laws, there are three sorts. The first is of those who laboured in the Pandeet, the Codes of Theodosius and Justinian, and the Novel Constitutions. The second is, of those who succeeded Irnerius, as Accursius,

Accursius, Bartolus, and many others, that for a long time governed the Courts of Justice. The third comprehends those who joined Human Learning with the Study of Laws. For the first I have a great Deference; for they both supply us with Reasons, and those often the very best, to demonstrate what belongs to the Law of Nature; and also often give Testimony to it, and no less to the Law of Nations, yet so as that they, as well as others, often confound these Words, nay and often call that the Law of Nations, which prevails among some Nations only, and that not by mutual Agreement, but by Imitation of one another, or even by a casual Consent. But again, those things which really belong to the Law of Nations, they often handle promiscuously and indiscriminatively with those that belong to the Roman Law, as appears under the Title concerning Captives and Postliminy. Therefore we took pains to have these distinguished.

54. The second Class, being regardless of the Divine Law and ancient Histories, studied to determine all Controversies between Kings and Nations from the Roman Laws, sometimes taking in the Ecclesiastical Canons. But these were likewise hindered, by the Infelicity of their Times, from discovering the true Sense of those Laws, though otherwise Sagacious enough in searching into the Nature of what is Good and Just: From whence it comes, that they are often good Law-makers, at the same time that they are but bad Interpreters of Laws already made. But they are then chiefly to be attended to, when they give Testimony to such a Custom, as now in our Time passes for a Law of Nations.

55. The Professors of the third Class, confining themselves within the Limits of the Roman Law, and either never, or but lightly, meddling with this general Law, are scarce of any Use to us in our Subject. They joined Scholastick Subtilty with the Know-

1. Ancient.

2. Those of the middle Age.

3. Modern.

Spaniards.

ledge of Laws and Canons; so that Covarruvias and Vasquez, two Spaniards, could not forbear treating of the Controversies between Nations and Kings; the one with a great deal of Freedom, the other more modestly, and not without some Exactness of Judgment.

Frenchmen.

The French have rather attempted to introduce Illustrations from History into the Study of Law, amongst whom Bodin and Hottoman are in great Esteem, the one for a continued Treatise, the other for some scattered Questions. Their Judgments and Reasons will often furnish us with Matter for the Search of Truth.

VII. The Design and Order observed through the whole Work explained.

56. In this whole Work there were three Things that I chiefly proposed to my self; to render the Reasons of my Decisions as evident as possible, to dispose the Matters to be treated of into a regular Method, and to distinguish clearly those Things which might appear to be the same, but were not.

57. I have forbore meddling with those Things that are of a quite different Subject, those for Instance, which it may be Profitable or Advantageous for us to do: For they properly belong to the Art of Politics, which Aristotle rightly so handled by it self, that he mixed nothing foreign with it: Bodin on the contrary has confounded it with that which is the Subject of this Treatise. Yet in some Places I have made Mention of the profitable, but by the Bye, and to distinguish it more clearly from a Question of Right.

58. He will do me Injustice, whoever shall think that I had regard to any Controversies of the present Age, either already risen, or that can be foreseen to arise. For I profess truly, that as Mathematicians consider Figures abstracted from Bodies, so I, in treating of Law, have withdrawn my Mind from all particular Facts.

A concise way of speaking.

59. As to the Style, I was not willing, by joining a multitude of Words with a multitude of Things to be

be treated of, to create a *Distaste* in the Reader, whose *Advantages* I consulted. I have therefore followed, as much as I could, a concise way of speaking, as convenient for such as undertake to instruct; that so, they that are to transact publick Affairs, may, as at one view, see, both what kinds of Controversies usually arise, and also the Principles by which they may be able to judge of them; which being known, it will be easie to suit the Discourse to the Subject Matter, and enlarge upon it as much as they please.

60. I have sometimes quoted the very Words of the ancient Writers, when they were such as seemed to be expressed, either with a singular Authority or Elegancy; pursuant to which Design you have them sometimes in Greek, but especially when either the Sentence was short, or the Beauty of it such as I could not hope to equal in a Translation; which notwithstanding I have always subjoined, for the use of those who have not learned the Greek Language.

The very Words of Authors quoted.

61. And now, whatever Liberty I have taken in judging of the Opinions and Writings of others, I desire and beseech all those, into whose Hands this Treatise shall come, to take the same with me. They shall no sooner admonish me of my Mistakes, than I shall follow their Admonitions. And for that Reason, if I have said any thing contrary either to Piety, or to good Manners, or to Holy Scripture, or to the Consent of the Christian Church, or to any kind of Truth, let it be unsaid again.

The Liberty of judging left to the Reader.



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H. G R O T I U S
O F T H E
Rights of W A R and P E A C E.

B O O K I.

C H A P. I.

What War is, and what Right is.

I.  ALL Differences, either of those who do not acknowledge one common Civil Right, such as they are who have not yet been Incorporated into one State; or who in themselves are of several Nations, as well private Persons, as Kings themselves; or they that have Regal Power, whether the Nobles, or a Free People: all such Differences, I say, have relation either to the Times of War, or Peace. But because War is undertaken for the Sake of Peace, and there is no Controversie from whence War may not arise, therefore all such Quarrels as use to happen upon that Account will

I. The
Order of the
Treatise.

properly be treated under the Head of the Right of War; and then War it self will lead us unto Peace, as to its End and Purpose.

II. The
Definition of
War and
the Original
of the Word
(bellum.)

II. i. Being then to treat of the Right of War, we must consider what that War is which we are to treat of, what the Right is which we search for. Cicero calls War a *Dispute by force*. But Custom has so prevailed, that (a) not the Act, but the State and Disposition now goes by that Name; so that War is the State or Disposition of those (considered in that Respect) who dispute by Force of Arms. Which general Acceptation of the Word comprehends all the kinds of War of which we shall hereafter treat, not excluding any private Combat, which is really (b) Ancienter than the public one, and is undoubtedly of the same Nature, and may therefore well have the same proper Name. Nor is the Derivation of the Word against it; for the *Latin Word Bellum (War)* comes

(a) *Not the Act, but the State.*] Philo, ad Book of Special Laws. *ἄνεπε γὰρ, &c.* In my Opinion, not only those are to be reputed Enemies, who are actually engag'd in Battle at Sea or Land; but we judge those so too, who are preparing for either Service, and shall presume to erect Instruments of War, in their Ports, or on their Walls, tho' they have not as yet began their Hostilities. And *Servius* upon this Passage, of the first *Æneid*,

A Nobler Warrior never drew a Sword. Dryden's Virg.

observes, that by War is to be understood a Previous Council and Forecast: By Arms or the Sword an actual Engagement. And in the VIIIth *Æneid* he says, War (*Bellum*) is all that State, or Time, in which something necessary to the War is providing, or the War it self continues; but the actual Engagement is properly call'd (*Prelium*) the Fight.

(b) *Ancienter*] Horace B 1. Sat. 3. *Cum prorepserunt primis, &c.*

*When Man first crept from Mother Earth's cold Womb,
He was a miserable Thing, and Dumb;
Then they for Acorns fought and shady Cave,
With Nails, then Clubs, the Weapons Nature gave.
And next with Swords which sail Convenience found.* Creech.

comes from the old Word *Duellum* (a *Duel*) as *Bonus* from *Duonus*, and *Bis* from *Duis*. Now *Duellum* is taken from *Duo*, *Two*, in the same Sense as we term Peace *Unity*; so the Greeks styl'd War πόλεμος, by a Word that implies a *Multitude*: And the Ancients call'd *Sedition* λ'η, from its *Disuniting* or *Dissolving*, as the Dissolution of the Body was signify'd by ο'ύη, either as it was a Separation of ο'ύο *Two* (Soul and Body) or as it was look'd upon to be a great *Misfortune*.

2. Neither does the Use of the Word (*War*) contradict this larger Acceptation. For tho' we only apply it to signify a Publick Quarrel, this is no Objection at all, since 'tis most certain, that the more eminent *Species* does often peculiarly assume the Name of its *Genus*. We do not include *Justice* in this Definition, because it is the Design of this whole Treatise to examine, whether any War be Just, and what War may be so. But we must distinguish that which is questioned, from that concerning which the Question is.

III. 1. Since we Intitle this Treatise of the Rights of War, we design first to enquire (as I said before) whether any War may be Just; and then what may be Just in that War? For *Right* in this place signifies meerly that which is Just, and that too rather in a Negative than a Positive Sense. So that here that is called Just, which is not Unjust. Now that is Unjust which is repugnant to the Nature of a Rational Society. So (c) Cicero says, it is unnatural to take from another to enrich ones self;

III. Right, as it is attributed to Action, described, and divided into that of Governors and that of Equals.

D 4

(c) Cicero.] Offic. III. 5. There is nothing upon Earth so contrary to Nature, neither Death, nor Poverty, nor Pain, nor whatever other Evil can befall a Man, either in his Body or Fortune, as to take away any thing wrongfully from another, and do ones self a Kindness by Injuring ones Neighbour. For it ruins all manner

self, which he proves thus, because, if that were allowed, all Human Society and Conversation must necessarily be dissolved. *Florentinus* also declares, that it is a Villainous Act for one Man to betray another, because Nature has founded a kind of Relation and Alliance between us. And *Seneca* observes, *As all the Members agree among themselves, because the Preservation of each one is the Interest of the whole, so should Men favour each other, for we were born for Conversation.* (d) *For no Society can be safe but by a mutual Love and Defence.*

2. But as in Societies, some are altogether equal, as that of Brothers, Citizens, Friends and Allies. And others unequal, καθ' ὑπεροχὴν, according to their respective Excellency, as *Aristotle* terms it; as that of Parents and Children, Masters and Servants, King and Subject, God and Man: So one thing may be Just, in respect of those who live together on an equal Foot, and another so in respect of the Governor and Governed; the one of which we may not improperly, if I am not mistaken, call the Right of Superiority, and the other the Right of Equality.

IV. Right
taken for
Quality di-
vided into
Faculty,
and Ap-
titude or
Finess.

IV. There is another Signification of the Word Right different from this, but yet arising from it, which relates to the *Person*: In which Sense this Right is a Moral Quality in any Person, enabling him to have, or do, something justly. This Right belongs

ner of Society and Intercourse amongst Men; since it is plain, that if once Men arrive at such a Pass, as to Plunder and Injure the rest of their Neighbours, out of hopes to procure some Advantage to themselves, there must follow of course a Dissolution of that Society, which of all things in the World is most agreeable to Nature. *Cockman's Tully's Offices.*

(d) *Seneca Epist. XLVIII.* That Society is industriously and religiously to be maintain'd, which unites us all one with another, and determines that there is some one common Right to which all Mankind are equally intitled.

belongs to the Person, tho' it sometimes relates to the thing it self, as Services of Land, which are called real Rights, comparatively to others meerly Personal, not because these do not belong to the Person, but because they belong to no other but to the chief Lord. But this Moral Quality when perfect, is called by us a Faculty; when imperfect, an Aptitude or Capacity: That there answers to the Act, and this to the Power, when we speak of Natural Things.

V. Civilians call a Faculty that Right which a Man has to his own; but we shall hereafter call it a Right properly, and strictly taken. Under which are contained, 1. A Power over our selves, which is term'd Liberty. 2. A Power over others, such as that of a Father over his Children, or a Lord over his Slave. 3. A Power over our Goods and Chattels; and this either a full and compleat Property, or a Property less full and perfect, such as a Man has in his Farms, or his Mortgages or his Loan, and to this answers a Debt or a due Return.

V. Faculty, strictly taken, divided into Power, Dominion, and Credit.

VI. But this Faculty also is of two sorts, either Vulgar and Private, which every one has over his own Affairs: Or Eminent and Publick, which is Superior to the former; such as a Community has over the Persons and Estates of all its Members for the common Benefit. Thus a Regal Power includes in it that of a Father and Master; so that (e) a King has a greater Right in the Goods of his Subjects for the public Advantage, than a pri-

VI. Another Division of Faculty into Vulgar and Eminent.

(e) A King has, &c.] Philo of Planting, $\chi \mu \delta \nu \alpha \rho \gamma \upsilon \rho \Theta$, &c. The Silver and the Gold, and whatever other things of value Subjects may possess and treasure up, are far more their Rulers than their own. So Pliny in his Panegyric, He (the King) is Lord of All, and what all Men have is His; And presently after, Is there any thing which Cesar can see that is not his?

private Person has in his own. Thus every Man is more obliged, in respect of the publick Interest, to the State, than to his Creditor.

VII. *What Aptitude is.*

VII. *Aristotle* calls Aptitude or Capacity ἀξίαν (f) *Worth*, or Merit, or Title: And *Michael* of *Ephesus* terms that which is called Equal or Right, according to that Merit, τὸ προσαρμόζον ἢ τὸ πρέπον, *Agreeable and Decent*.

VIII. *Of Expletive and Attributive Justice not properly distinguished by Geometrical and Arithmetical Proportions, nor is this Con- versant about things common nor that about things private.*

VIII. I. 'Tis Expletive or Satisfactory Justice, Justice properly and strictly taken, which respects the Faculty, or that Right we have to our own, and is call'd by *Aristotle* συναλλακτική *Commutative*, a Word too narrow and confined. For, that he who has got what is mine, should restore it to me is not ἐκ συναλλάγματος by way of *Commutation or Change*, and yet it belongs to this Justice. Wherefore he also calls it more properly ἐπανορθωτικήν, *corrective* Justice. Attributive Justice, styl'd by *Aristotle* διανεμητική, *Distributive*, respects Aptitude or Worth; the attendant of those Virtues that are beneficial to others, as Liberality, Mercy, and that prudent Care which consults the Necessities and Occasions of Government. But whereas the same *Aristotle* says, that an Expletive Justice has respect to a Simple, which he calls ἀριθμητικήν *Arithmetical* Proportion; but Attributive to a Comparative,

(f) *Worth, or Merit, or Title.*] *Cicero's* Offices, B. i. Now if there should happen any Contest or Competition between these Relations, which of 'em should have the greatest share of our Duty, we should pay the first regard to our Country and Parents, from whom we have received the most endearing Obligations; the next to our Children and Family, who all have their Eyes upon us alone, and have no body else they can depend on; next in order to these come our Kindred and Relations, whose Fortune is generally the same with our own. To each of these therefore, whom I have just now mentioned, we most of all owe what is necessary for their Subsistence; but then as for living and eating together, for mutual Advising, Discourse, Exhortation, Comforting, and sometimes (if occasion serves) rebuking Friendship is the properest Soil for them.

parative, which he terms γεωμετρικὴν Geometrical: Which is the only (g) Proportion allowed by the Mathematicians, this may hold in some Cases, but not in all. Neither does Expletive Justice of it self differ from Attributive in such use of Proportions, but in the Matter, about which it is conversant, as we have said already. And therefore in Elections, made by Societies, the Choice is made by a Comparative Proportion; for if only one be found worthy of a Publick Office, it is attributed to him, and that by a simple Proportion.

2. Neither is that more true which some maintain, that Attributive Justice is exercised only about things common, and Expletive [about things private, (that is belonging to private Persons.) For on the contrary, if a Man would bequeath his Estate by Will, he does it by Attributive Justice, and a City which pays out of the Common (*Stock*) what some of the Citizens have expended on the Publick, does it by the Right of Expletive Justice. This Distinction *Cyrus* learnt of his Tutor: For when *Cyrus* had adjudged the lesser Coat to the lesser Boy, tho' it belonged to another Boy of a bigger size; and so on the other side gave his Coat, being the bigger, to that bigger Boy: His Tutor told him, ὅτι ὅποτε μὴ κατὰ σάβειν τὴ ἀριστερίαν &c. That *had he been appointed Judge of what fitted each of them best, he ought to have done as he did: But since he was to determine whose Coat it was, his Business was to have considered which*
had

(g) Proportion.] *Cassiodore* calls it a comparing of Dispositions, there is a very proper Description in *Homer* of that Proportion observed in Attributive Justice:

Good to the Good he gave, and Worse to Worse.

had (b) the juster Title to it, whether he who took it away by Force, or he who made it or bought it.

IX. Right taken for a Rule, or Law defin'd and divided into Natural and Voluntary.

IX. There is also a third (i) Signification of the Word *Jus* (Right) which makes it equal to *Lex* (a Law) when taken in its largest Sense, as being a Rule of Moral Actions, obliging us to that which is Just and Reasonable. We require it should oblige; for Counsels, and other Prescriptions, are indeed honest, but not obliging, and so come not under this Notion of Law, or Right. But Permission, properly speaking, is not an Action, but rather an Inaction, unless as it obliges another to give no Impediment to him, unto whom a Permission is granted. But (as we said) it must oblige us to that which is Reasonable, not barely to that which is Just: Because (k) Right in this Sense does not belong to the matter of Justice alone (such as I have before explained it) but also to that of other Virtues; but yet what is Reasonable by this Right, may also in a larger Acceptation be term'd

(b) *The juster Title.*] See the same Xenophon in his 2d Book of Instructions: And to this that Law of Moses has Regard: Neither shalt thou Countenance a Poor Man in his Cause, Exod. xxiii. 3. Levit. xix. 15. For as Philo directs, We ought always to consider the Merits of the Affair in Debate abstractedly and without any Respect to the Persons of the Parties contending.

(i) *Signification of Jus equal to that of Law.*] In this Sense is that of Horace.

Jura inventa metu injusti fœtare necesse est,

'Twas fear of Wrong that made us make our Laws.

Creech.

And in another Place:

Jura negat sibi nata,

Let him deny that Laws were made for him,

Which the Scholiast expounds, *Legum sit contemptor*, Let him despise the Rules of Justice.

(k) *Right in this Sense, &c.*] You have an Instance of this in Zaleucus's Law, that ordained a Punishment for him, who contrary to the Advice of his Physician should presume to Drink any Wine.

term'd Just. Of this Right thus taken, the best Division is that of *Aristotle*, into that which is Natural, and that which is Voluntary, which he calls Lawful or Positive, the Word Law being taken in its stricter Sense. Sometimes also τὰ ἐν τάξει, a well ordered Right. We find the same difference among the *Hebrews*, who when they speak distinctly, call the Natural Right מִצְוֹת Precepts, and the Voluntary Right עֲקָבִית Statutes; the former of which the *Septuagint* call δίκαια Duties, and the other ἐντολὰς Commandments.

X. 1. (1) Natural Right is the Rule and Dictate of Right Reason, shewing the Moral Deformity, or Moral Necessity there is in any Act, by either its complying, or disagreeing with Human Nature it self, and consequently that such an Act is either forbid, or commanded by God, the Author of Nature.

X. The Law of Nature, de- fin'd, di- vided, and distinguish- ed from such as are not properly called so.

2. The Actions upon which such a Dictate is given, are Morally and in themselves either Obligatory or Unlawful, and therefore must consequently be understood to be either commanded, or forbid by God himself; and this makes the Law of Nature differ not only from Human Right, but from a Voluntary Divine Right; for that does not command or forbid such things as are in themselves, or in their own

(1) Natural Right is the Rule and Dictate of Right Reason.] Philo in his Book, Intitled, Every good Man free: Νόμος δὲ ἀψευδής, &c. Right Reason is a Law that cannot deceive or be Erroneous, a Law not to be corrupted by this or that mortal Man, not a dead lifeless Thing on lifeless Paper or Pillars, but from its own Immortal Nature imperishable, deeply engraved on the Immortal Mind. And Tertullian, of the Soldier's Crown: Will you then inquire for the Law of God, a written Law to prove it, when you have in common with all the World the Natural Law impressed on your Minds? And *M. Antoninus*. B. 2. Τέλος λογικῶν, &c. The End and Purpose of Rational Animals is to observe and follow that Reason and Law which has prevailed in the City and Government of greatest Antiquity.

own Nature Obligatory and Unlawful, but by forbidding it renders the one Unlawful, and by commanding the other Obligatory.

3. But that we may the better understand this Law of Nature, we must observe, that some things are said to belong to it, not properly, but (as the Schoolmen love to speak) by way of Reduction, and indirectly, that is, to which the Law of Nature is not repugnant; as some things, we just now said, are called just, because they have no Injustice in them; and sometimes by the wrong use of the Word, those things which our Reason declares to be honest, or comparatively good, tho' they are not enjoyed us, are said to belong to this Natural Law.

4. We must further observe, that this Natural Law does not only respect such things as depend not upon Human Will, but also many things which have been allowed by the general Consent of Mankind. Thus Dominion, as now in use, was introduced by Man's Consent, and being once admitted, this Law of Nature informs us, that it is a wicked thing to take away from any Man against his Will what is properly his own. Wherefore *Paulus* the Lawyer infers, that (m) Theft is forbid by the Law of Nature; *Ulpian*, that it is dishonest by Nature, and *Euripides* calls it hateful to God, as you may see in these Verses of *Helena*.

For

(m) Theft is forbid by the Law of Nature.] *Julian*. ὁ δὲ νόμος τοῦ θεοῦ &c. There's a second Law (after that of acknowledging and worshipping God) a Law in its own Nature Sacred and Divine, which Commands us at all Times, and in all Places to abstain from what belongs to others; and which permits us neither in Word nor Deed, nor even in our most private Thoughts to confound each other's Properties. And *Cicero* in his 3d Book of Offices, from *Chrysippus*: In Life 'tis allowable, that every one should get what is useful and convenient for his comfortable Subsistence, but it is not so to take it away from other People.

*For God hates Violence; and ne'er approves
 What's not by fair Means, but Oppression, gain'd.
 Wealth got by Fraud deserves our utmost Scorn.
 The Air and Earth are Human Property,
 And afford the World sufficient room:
 No need at all t' invade another's Right.*

5. But the Law of Nature is so unalterable, that God himself cannot change it. For tho' the Power of God be Immense, yet may we say, that there are some things unto which this infinite Power does not extend. Indeed when we speak so, 'tis only a manner of speaking, that is so far from signifying any thing, that it implies in it a manifest Contradiction. For instance then, as twice two should not be four, God himself cannot effect; so neither can he, that what is intrinsically evil, should not be evil. And this is *Aristotle's* Meaning when he says, *ἐντα ἑαυτοῦ ἀνόμασαι*, &c. *Some things are no sooner mention'd, than we discover Depravity in 'em.* For as the Being of things after they exist, and in the manner they exist, depends not upon any other, so neither do the Properties which necessarily follow that Being. Now such is the Evil of some Actions, compared with Nature guided by right Reason. Therefore God suffers himself to be judged of according to this Rule, as we may find, *Gen. xviii. 25. Esai. v. 3. Ezek. xviii. 25. Jerem. ii. 9. Mich. vi. 2. Rom. ii. 6. iii. 6.*

6. Yet it sometimes happens, that in these Acts, concerning which the Law of Nature has determined something, some shew of Change may deceive the Unthinking, whereas indeed the Law of Nature is not changed; but the Things, concerning which the Law of Nature determines, may undergo

undergo a Change. As for Example: If my Creditor forgive me my Debt, I am not then obliged to pay it; not that the Law of Nature ceases to command me to pay what I owe, but because what I did owe ceases to be a Debt. For as *Arrian* rightly argues in *Epictetus*, ἐν ἀρκεί τὸ δανείσασθαι πρὸς τὸ ὀφείλειν, ἀλλὰ δεῖ προσεῖναι καὶ τὸ ἐπιμένειν ἐπὶ τῇ δανείᾳ, καὶ μὴ διαλελυῶσθαι αὐτὸ. *Non sufficit, &c. To make a just Debt, it is not enough that the Money was lent, but it is also requisite, that the Obligation continue undischarg'd.* So when God commands any Man to be put to Death, or his Goods to be taken away, Murder and Theft do not thereby become lawful, which very words always include a Crime; but that cannot be Murder, or Theft, which is done by the express Command of him who is the Sovereign Lord of our Lives and Estates.

7. There are also some things allowed by the Law of Nature, not absolutely, but according to the present posture of Affairs; so 'till a Property was admitted, the common Use of things was natural, and before the erecting of Courts of Judicature, it was lawful to recover our own by Force.

XI. That Natural In-
finit, either
common
with other
Creatures or
peculiar to
Men, does
not make
another di-
stinct Law.

XI. But that Distinction which we find in the Books of the *Roman* Laws, that this immutable Right is of two sorts, either such as is common to Men with Beasts, which they call in a stricter Sense the Law of Nature; or that which is peculiar to Men, which they often style the Law of Nations, is of very little or no use; for nothing is properly capable of a Law, but that Nature which can practise general Precepts; which *Hesiod* has well observ'd:

(a) Τὸν

Τὸν δὲ γὰρ ἀνθρώποις νόμον, &c.

(n) *To us great Jove has kindly given Laws:
But Fish, and Beasts, and Birds, for want of these
Devour each other; they no Justice have.
Blest Man's possess of This, the best of Goods.*

Cicero, in his first Book of Offices, says, we do not allow Horses and Lions to be just. And Plutarch, in the Life of Cato the Elder, νόμον μὲν γὰρ, &c. *We by Nature make use of Law and Justice, only in respect of Men.* And Lactantius in his 5th Book, *In all irrational Creatures, we see that Nature provides for her self; for they Injure others to Advantage themselves; not knowing, that to do hurt is evil. But Man, having the Knowledge of Good and Evil, abstains from hurting others, tho' to his own Detriment.* Polybius having related upon what Terms Men first engaged in Society, adds, when they saw any one (o) injurious to his Parents or Benefactors, they could not but resent it, giving this

E Reason

(n) *To us Great Jove has, &c.* Juvenal in his xvth Satyr.

*This Nat'ral Piety did first refine
Our Wit, and rais'd our Thoughts to Things Divine
This proves our Spirit of the Gods Descent,
While that of Beasts is prone and downward bent.
To them but Earth-born Life they did dispense,
To Us, for mutual Aid, Celestial Sense
From struggling Mountains, for Publick Good
To Rank in Tribes, and quit the Solungs Wood,
Houses to build and them contiguous make,
For Cheerful Neighbourhood and Safety's sake.* Dryden.

And Chrysostom upon vii Rom. γὰρ γὰρ Διὰ τοῦτο, &c. Nor must we from Things inanimate and insensible expect the Rule of just and Unjust.

(o) *Injurious to his Parents.* See an Instance in Ham. Gen. xxi. where the Punishment follows.

Reason for it, τὸ ὅδ' ἔνεκε τῶν ἀνθρώπων ταύτη δια-
φερνται, &c. For since Human Kind does in this
differ from other Animals, [that they alone enjoy Rea-
son and Understanding, 'tis very unlikely that they
should (as other Creatures) pass by an Action so repug-
nant to their Nature, without reflecting on what they
have done, and testifying their (p) Displeasure at it.

2. If at any time (q) Justice be attributed to
Brute Beasts, it is improperly, and only on the
Account of some (r) Shadow or Resemblance of
Reason. But it is not Material to the very Es-
sence of Right, whether the Act it self, on which
the Law of Nature has decreed, be common to
us, with other Creatures, as the bringing up of
our Offspring, &c. or peculiar to us only, as the
Worship of God.

XII. How
the Law
of Nature
may be
proved.

XII. Now that any thing is or is not by the
Laws of Nature, is generally proved by Argu-
ments drawn either from what goes before or
from what follows. The former way of Rea-
soning is the finer and more abstracted; the lat-
ter more popular. The Proof by the former is
by

(p) Displeasure at it.] Chrysostom, xiii. of Images. καὶ ὃ τὸ
συμπαυακτεῖν. &c. We are all naturally inclined to join in In-
dignation and Resentment, with those who are injur'd: We im-
mediately become Enemies to the Offenders, though we our selves
suffer nothing from them. And the Scholiast upon Horace, Satyr iii.
B. 1. Our Horror and our Anger do arise, but not equally, at the
Report of Murder and of Theft.

(q) Justice be attributed to Brute Beasts.] Pliny, B. viii. Ch. 5. takes
Notice of a certain Sense of Justice in Elephants. And in B. x. he
tells a Story of an Asp that destroy'd its own Young one, for kil-
ling the Man's Son who entertain'd it.

(r) Shadow or Resemblance of Reason.] Seneca, B. v. Ch. 3. of An-
ger, says that Beasts have not the Passion of Anger, but instead of
that have a Kind of sudden Emotion: Brutes, says he, are void of
human Affections, but have certain Impulses very like 'em. So Origen
against Celsus, Beasts have no Vices, but only some Actions that resem-
ble 'em; as the Lyon seems to be incens'd and in a Rage.

by shewing the necessary Agreement or Disagreement of any thing, with a Nature that's reasonable and designed for Society. But the Proof by the latter is, when we cannot by perfect Demonstration, yet with very great Probability, conclude that to be the Effect of the Law of Nature, which is generally believed to be so by all, or at least, the most civilized, Nations. For an universal Effect, requires an universal Cause. And there cannot well be any other Cause assign'd for this General Opinion than that General Sense, which is said to be common to all Mankind.

There's a Passage in *Hesiod* to this purpose very much commended.

Ὀνίη δ' ἔστι, &c.

*What many Nations as their Thoughts declare
Must needs be so in Fact.*

Τὰ χοινῇ παυνόμυρα πιστά, (f) *That deserves our Credit,*
E 2

(f) *That deserves our Credit, &c.* Aristotle in his *Nicom.* B. x. 11 ὁ γὰρ πάντες δὲ καὶ, &c. What appears so to all that we declare to be so; and whoever pretends to invalidate or take away this Credit, can never himself offer any thing that better deserves our Belief. *Seneca*, Among all this Variety of Opinion, all the World will tell you that you ought to be grateful to your Friends and Benefactors. *Quintilian*, I shall call that the Custom or Rule of Speech which is the Consent of the Learned, as that should be the Custom or Rule of Life, which is the Consent of the Good. *Josephus*, B. xvi. of the *Jewish History*, ἰδεὶς μὲν γὰρ ἴδεις ἑὴ γένεσιν, &c. 'Tis no new thing for whole Nations, as well as Particular Places, to change Humours and Manners; but Justice is with all People, and in all Times and Places, for ever the same; a Blessing that extends indifferently even to *Greeks* and *Barbarians*; the very Reason and Foundation of all our Laws; so that if we do but maintain them Sacred; that Virtue alone will both exalt us and make us Friends to all Mankind. Wherefore it should be my Request to the whole World, that People would not hate one another, for differing in the way of living; so long as they agree in the main End and Business of Life. Virtue in fine, is common to all Men, and human Society can never be happy without it. And *Tertullian* in his *Prescription against Heretics*; What is found among many to be one and the same, is not Error but Tradition.

dit, which universally appears to do so, said *Heracitus*, determining λόγον ἢ ζυγόν, *Common Reason* to be the best Evidence of the Truth. And *Aristotle*, πρῶτον πάντας, &c. 'Tis the strongest Proof, if all the World agree to what we say. *Cicero*, The Consent of all Nations is to be reputed the Law of Nature. So *Seneca*, What all Men believe must be true. Likewise *Quintilian*, We allow that to be certainly true which all Men agree in. I with some Reason said, By the most civilized Nations; for as *Porphry* well observes, τίνα τῆς ἰθυῶν, &c. Some People are extreme (t) Savage, and therefore no one of Discretion and Candor will lay this as a general Reproach to human Nature. And *Andronicus Rhodius*, πρὸς ἀνθρώποις, &c. That Law which is call'd the Law of Nature is unchangeable with all Mankind, that are in their Wits, and of a right and sound Mind: But if it does not appear so to Men of weak and disturbed Judgments, it argues nothing to the purpose, for we all allow Honey to be sweet, tho' it may taste otherwise to a sick Person. To which agrees that of *Plutarch*, in the Life of *Pompey*, φύσει μὲν, &c. No Man either was or is by Nature a wild and unfociable Creature, but some have grown so by addisting themselves to Vice, contrary to the Rules of Nature; and yet these, by other Manners, by changing their Method of living, and Place of Abode, have return'd to their natural Gentleness. *Aristotle* gives this Description

(t) Savage.] *Justin* in his Discourse with *Tryphon*, πολλοὶ ὅσοι ἀμαρτάνουσιν, &c. Except they be those, who hurry'd away by an impure Spirit, and corrupted by an ill Education, bad Customs and wicked Laws, have quite lost their natural Notions. *Philo*, in his Book, *Beit'd*, Every Good Man Free, διὰ τὴν σαυμάσας αὐτὴν τις, &c. One may very well wonder at their Blindness, who cannot discern in Things, such clear and manifest Properties. And *Chrysostom* in his Oration that Christ is God, μὴ τοίνυν ἴτε, &c. Therefore pray do not form your Judgment of Things from People, who themselves are corrupted in their Opinions.

ption of Man, as peculiar to him, ἀνθρώπου ζῷον ἡμεῖς φῦσαι, (u) *Man is by Nature a mild Creature.* And again, δὲ ἃ ὁμοιωμέν, &c. *To find what is truly Natural, we must seek it from those who are perfect in their Kind, not from them that are corrupted.*

XIII. The other kind of Right, we told you, is the Voluntary Right, as being derived from the Will, and is either Human or Divine.

XIII. Voluntary Rights divided into Human and Divine.

XIV. We will begin with the Human, as more generally known; and this is either a Civil, a Particular, or a Common Right. The Civil Right is that which results from the Civil Power. The Civil Power is that which governs the State. The State is a compleat Company of Free Persons, associated together to enjoy the Protection of Laws for their common Benefit. The Particular Right, and which is not derived from the Civil Power, though subject to it, is various, including in it that of a Father over his Child, of a Master over his Servant, and the like. But the common Right, is the Right of Nations, which derives its Authority from the unanimous Approbation of all, or at least of many Nations. I said of many, because there is scarce any Right found, except that of Nature, which is also called the Right of Nations, common to all Nations. Nay, that which is reputed the Right or Law of Nations in

XIV. Human Rights divided into a Civil Right, a Particular Right, and a Common Right, or the Law of Nations: This explained and proved.

E 3

one

(u) *Man is by Nature a mild Creature.* St. Chrysostom says the same in his xith of Images; which Philo on the Decalogue more fully explains, ἀγέλαστον ζῷον, &c. For Nature having made what she design'd for the gentlest, a sociable Creature, one that loves Company, she call'd him to Concord and Community, and gave him Speech proper to lead him into Harmony and Conversation. And again, on the Immortality of the World: ἡμερώτατον ζῷον, &c. Man is the tamest Creature in the World, Nature having presented him with the Faculty of Speaking, by which his roughest wildest Passions are charm'd and smooth'd into Gentleness and Temper.

one part of the World, is not so in another, as we shall shew hereafter, when we come to treat of *Prisoners of War*, and *Postliminy* or the *Right of Returning*. Now the Proofs on which the Law of Nations is founded, are the same with those of the *Unwritten Civil Law*, viz. continued Use, and the Testimony of Men skilled in the Laws. For this Law is, as *Dio Chrysostom* well observes, *ἐμπειρία βίου καὶ χρόνος*, the Invention of Time and Experience. And to this purpose the eminent Authors of the World's Annals are of excellent use to us.

XV. The Divine Law divided into that which is Universal, and that which is peculiar to one Nation.

XV. The Divine voluntary Law (as may be understood from the very Name) is that which is derived from the express Will of God himself; whereby it is distinguished from the Natural Law, which in some Sense may be called Divine also. And here may take place that which *Anaxarchus* said in *Plutarch* (but too indistinctly) that God does not *will* a thing because it is just; but it is just, that is, of Right obliging, because God *wills* it. And this Law was given either to all Mankind, or to one People only: We find that God gave it to all Mankind three times. First, immediately after the Creation of Man. Secondly, upon the reinstating of Mankind after the Flood; and thirdly, in that more perfect re-establishment by Christ. These three Laws do certainly oblige all Mankind, as far as they arrive to the Knowledge of them.

XVI. That the Law given to the Hebrews did not oblige Strangers.

XVI. Of all the Nations of the Earth, there was but one, to whom God peculiarly vouchsafed to give Laws, which was that of the Jews, to whom *Moses* thus speaks, *Deut. 4. 7. What Nation is there so great who hath God so nigh unto them, as the Lord our God is in all things that we call upon him for? And what Nation is there so great, who have Statutes, and Judgments so righteous, as all this Law, which I set before you this Day.* And the Psalmist, *cxlvii. 19,*

20. He shewed his word unto Jacob, his Statutes and Ordinances unto Israel. He hath not dealt so with any Nation, and as for his Judgments they have not known them. Neither is it to be doubted, but that those Jews (among whom Tryphon also in his Disputes with Justin) do egregiously err, who think that Strangers too, if they would be saved, must submit to the Yoke of the Mosaic Law: For that Law obliges only those, to whom it was given. And to whom that Law is given, itself declares. Hear O Israel; and we read every where that the Covenant was made with them, and that they were chosen to be the peculiar People of God, which Maimonides owns to be true, and proves it from Deut. 32. 4.

But among the Hebrews themselves there always lived some Strangers, *εὐσεβείς καὶ σεβόμενοι τὸ θεόν*, Religious Persons, and such as feared God, as the Syrophenician Woman, Mat. 15. 22. and Cornelius, Act 10. 1. one τῶν σεβομένων Ἑλλήνων of the Devout Greeks, Act 17. 4. in the Hebrew *יְדִידֵי הַיְּדִידִים* the Righteous of the Gentiles; as it is read in the Talmud Title of the King; and he who is such a one is called in the Law *בֶּן דִּי נָכַר* the Son of Sojourning. Lev. 22. 25. *בֶּן דִּי נָכַר*, a Stranger, and a Sojourner, Lev. 25. 47. Where the Chaldee Paraphrast calls him, an (x) Uncircumcised Inhabitant. These, as the Hebrew Rabbins say, were obliged

E 4

(x) Uncircumcised Inhabitant.] 'Tis of such a one that 'tis spoken Exod. xii. 45. who is distinguish'd from a Proselyte, that is, the Circumcis'd Stranger, as is plain from comparing this Passage with that of Numb. ix. 14. Maimonides in his Book of Idolatry, Ch. x. 36. has a great many things relating to these Religious Uncircumcis'd. And in his Commentary upon Mishnaoth, and in several other Places, he says, that the Pious People will certainly be Partakers of the Blessings of a future State. St. Chrysostom on the 2d Ch. to the Romans *καὶ οἱ ἰουδαῖοι*, &c. What Jew does he

mean

to keep the Precepts given to *Adam*, and *Noah*, to abstain from Idols and Blood, and from other things, which shall be mention'd hereafter in their proper place; but not the Laws peculiar to the *Israelites*. And therefore, tho' it was not lawful for the *Israelites* to eat of any Beast that died of itself, yet it was allowed to the Strangers that dwelt among them, *Deut.* 14. 21. unless when by certain Laws 'twas particularly exprest, that the Stranger, as well as the Native, should be bound to observe the same things. It was also allowed to Strangers who came from Abroad, and never submitted to the *Levitical* Law, to worship God in the Temple at *Jerusalem*, and to offer Sacrifices, but yet so that they (y) stood in a particular place, separate from that of the *Hebrews*, *1 Kings* viii. 41. *2 Macc.* iii. 35. *John* xii. 20. *Act* viii. 27. Nor did (y) *Elisha* signifie to *Naaman* the Syrian, nor *Joaab* to the *Ninevites*, nor *Daniel* to *Nebuchadnezzar*,

mean here, and what Gentiles is he talking of? Of those who were before the coming of Christ, for his Discourse does not as yet reach the Times of Grace; and then he proceeds, *ἔθνη καὶ οἱ ἄλλοι*, &c. The Gentiles he means here are not those who worship Idols, but the Godly, and such as are obedient to the Dictates of Natural Reason, such as, excepting the Jewish Institutions, observe all things that tend to Piety and Religion. He instances this in *Melchizedeck*, *Job*, the *Nimrites* and *Coraelus*. Add then by and by *ἔθνη καὶ οἱ ἄλλοι*. Here again by a Gentile he means not an Idolater, but a Person strictly Virtuous; a Worshipper of God, and who is only exempt and free from the Rites of the Law. 'Tis in the same Sense that he takes that of the Apostle. *τοῖς ἀνόμοις, αἰς ἀνομίαν*, to them that are without Law, as without Law. And in his XIIth Oration of Images, *ἔθνη καὶ οἱ ἄλλοι*, &c. He calls him here a Greek or a Gentile, not who serves Idols, but who adores the only one God, who is not indeed led up to the Necessity of the Jewish Observations. I mean the superstitious keeping of Sabbaths, and Circumcision and various Washings; but who altogether expresses a Regard to Devotion, and a Love of Wisdom.

(y) Stood in a particular Place.] See *Josephus* in his Account of *Solomon's Temple*.

(z) *Elisha* signifie to *Naaman*.] *St. Hilary* on *Matt.* xii. is of the same Opinion.

nozzar, nor the other Prophets to the *Tyrians*, *Moabites* and *Egyptians*, to whom they wrote, that there was any necessity for them to receive the Law of *Moses*.

What I here have said of the whole Law of *Moses*, I would be understood to mean of Circumcision too, which was as it were, the Introduction to the Law. There is only this difference, that the Law of *Moses* obliged only the *Israelites*; but that of Circumcision obliged all the Posterity of *Abraham*. Whence we read in the *Hebrew* and *Greek Histories*, that the *Idumeans* (the *Edomites*) were compelled by the Jews to be Circumcis'd. Wherefore those People, who besides the Jews, were Circumcis'd (as there were many, according to *Herodotus*, *Strabo*, *Pbilo*, *Justin*, *Origen*, *Clamens Alexandrinus*, *Epiphanius* and *St. Jerom*) were probably descended from *Ismael*, *Esau* or (a) the Posterity of *Keturah*.

But of all other Nations that of *St. Paul* holds true, *Rom. ii. 14, 15*. Since the Gentiles, who have not the Law, do (b) by Nature (that is by their own Original Customs, unless you had rather refer the Word *Nature* to what goes before, and so oppose the

(a) The Posterity of *Keturah*.] Those *Ethiopians* whom *Herodotus* reckons among the Circumcis'd were very probably descended from these: *Epiphanius* calls 'em *Homerites*.

(b) By Nature.] Τοῖς τῆς φύσεως λογισμοῖς, By the Reasonings of Nature, says *St. Chrysostom*. And presently after, Ἰδὲ τὸ τὸ. &c. For upon this Account, says he, are they to be admired, because they did not want the Law. And again, ἀπὸ αὐτῶν. &c. Conscience and Reason supply the Room of the Law. *Tertullian* against the Jews. Before the Law of *Moses* that was written in Tables of Stone, I do maintain that there was an unwritten Law, which was naturally understood and observed by the Fathers. That of *Isocrates* does not differ much from this: Δὲ τὰς εὖ πολιτευομένους, &c. Those who consult the Good of their Country and their Government, need not write over their Doors, but lay up in their Hearts, what is just and Honest.

the Gentiles to the Jews, who as soon as they were born, had the Law instilled into them) the things contained in the Law, these having not the Law are a Law unto themselves, as shewing the work of the Law written in their Hearts, their (Thoughts and) Consciences the mean while accusing or else excusing one another. And again in the 26th Verse, If the Uncircumcision keep the Righteousness of the Law, shall not his Uncircumcision be counted for Circumcision? And therefore Ananias the Jew, in the History of Josephus, did very well instruct *Izates Adiabenus* (*Tacitus* calls him *Ezates*) that God might be rightly worshipped, and well pleased with us, tho' we were (c) not Circumcis'd. Now the Reason why so many Strangers were Circumcis'd (among the Jews) and by that Circumcision obliged to keep the Law, (as *St. Paul* expounds it, *Gal. 5. 3.*) was partly that they might obtain the Privileges of the Jewish State, for Proselytes (called by the Hebrews גֵּרִים צְדִיקִים *Proselytes of Righteousness*) enjoyed the (d) same Rights with the Israelites, *Num. 15.*) and partly that they might be (e) Partakers of those Promises which were not common to Mankind, but peculiar to the Hebrews only. Tho' I cannot deny, but that afterwards some entertained an erroneous Opinion, that there could be no Salvation without the Pale of the Jewish Church.

Hence

(c) *Not Circumcis'd.*] Tryphon himself, abating something of his usual Rigour says thus to *Justin*: μὴ οὐκ ἔστιν, &c. Tho' you had continued in that Course of Philosophy, there were some hopes left you of a better State.

(d) *Same Rights with the Israelites.*] *Justin* in his Discourse with Tryphon πρὸς τὸν Τρυφῶνα, &c. The Circumcis'd Proselyte, if he Converses with the People, is as the Native or Home-born himself.

(e) *Partakers of those Promises.*] And therefore they were admitted to the Communion of the Passover.

Hence we may conclude, that we are obliged to no part of the *Levitical* Law, as a Law properly so called, because all Obligation beyond that, arising from the Law of Nature, is derived from the Will of the Law-giver; but it cannot be made appear, that it was the Will of God that any other People, beside the *Israelites*, should be bound by that Law; and therefore, as to our selves, we need not pretend to prove the abrogating of the Law; for it cannot be said to be abrogated in respect to them whom it never bound. But the Obligation of it was abolished to the *Israelites* as to the Ceremonial part, as soon as ever the Evangelical Law began to be published, which was manifestly revealed to St. Peter, *Acts* x. 15; but as to the rest, after that People ceased to be a People, by the Destruction of their City, and the utter Desolation of it, without any hopes of Restauration. But we Strangers are not freed from the Law of *Moses* by the coming of Christ; but, whereas before, we had only an obscure hope in the Goodness of God, we are now by an Express and Authentic Covenant assured, that we, together with the Jews, (the Children of the Patriarchs) shall be made one Church; their Law, which as a *Partition* Wall divided us, being quite taken away, *Eph.* 2. 14.

XVII. Since then the *Mosaic* Law cannot directly oblige us (as I have already shewed) let us see of what other use it may be to us, as well in this *Treatise of the Right of War*, as in other like Cases. For the Knowledge of it may be necessary in many Points:

First then, the Jewish Law informs us that nothing is enjoined there contrary to the Law of Nature; for since the Law of Nature (as I said before) is perpetual and unchangeable, nothing could be commanded by God, who can never be

Unjust,

XVII.

What Arguments
Christians
may fetch
from the
Judaical
Law, and
how.

Unjust, contrary to this Law. Besides the Law of *Moses* is called *clean* and *right*, Psalm xiii. 8. and by the Apostle St. *Paul*, *holy*, *just* and *good*, Rom. vii. 12.

I speak of its Precepts, for we must treat more distinctly of its Permissions. Now Legal Permissions (for that which relates to the bare Fact, and signifies the removal only of Hindrances, is not to the present purpose) is either *compleat*, and *without Reserve*, which gives us a Right to do something with a lawful Authority; or *less compleat*, and *with Reserve*, which gives us only an Impunity with Men, and a Right that no Man shall molest and hinder us. From the first of these Permissions, as well as from a positive Precept, it follows, that what the Law allows cannot be contrary to the Right of Nature. But as to the latter, the Case is entirely different: But this Consequence seldom takes place; because where the Words Permissive are ambiguous, it is better for us to judge, by the Law of Nature, of which kind the Permission is, than by arguing from the manner of the Permission, to proceed to the Law of Nature.

The next Observation is not unlike this, *viz.* That Christian Princes may now make Laws of the same Import with those given by *Moses*, unless they be such Laws as wholly related either to the time of the expected *Messias*; and the Gospel not then Published; or that Christ himself has either in general, or in particular commanded the contrary: For excepting these three Reasons, no other can be imagin'd, why what *Moses* formerly commanded should now be unlawful.

The third Observation may be this; whatsoever was enjoined by the Law of *Moses*, which relates to those Virtues that Christ requires of his Disci-

Disciples, (f) ought now as much, if not more, to be observed by us Christians. The ground of this Observation is, because what Virtues are required of Christians, as Humility, Patience, Charity, &c. are to be practis'd (g) in a more eminent degree, than under the State of the *Hebrew Law*; and this deservedly too, because the Promises of Heaven are more clearly proposed to us in the Gospel. Wherefore the old Law, in comparison of the Gospel, is said to be neither perfect, nor ἀμεμπτος, Faultless, *Heb. vii. 19. viii. 7.* And Christ is termed the *End* and Consummation of the Law, *Rom. x. 5.* but the Law only our *School-master*, or Guide, to bring us, unto Christ, *Gal. iii. 25.* So likewise the Old Law of the Sabbath, and (h) that of Tythes, are a Demonstration, that Christians are obliged to set apart no less than the seventh Part of their Time for the Worship of God, nor no less than the tenth Part of their Fruits or Profits for the Maintenance of those who are employ'd in Holy Affairs, or for other sacred and Pious Uses.

CHAP.

(f) Ought now as much, if not more.] *Tertullian*, of Bashfulness, *The Liberty we have in Christ, has done no Prejudice to Innocence; the whole Law of Piety, Truth, Constancy, Chastity, Justice, Mercy, Benevolence and Modesty is still in force.*

(g) In a more eminent Degree.] *Chrysostom*, of Virginity, *xciv. μεῖζονα ἐπιδείκνυται, &c.* We ought to express a greater Virtue, because upon us now there is a large Effusion of the Grace of God's Spirit, and the Gift of Christ's Presence is Great and Plentiful. And to this purpose in his Oration, that Vices proceed from neglect; and in his III^d Book of *Rasts*, and upon the *Romans*, *vi. 14. vii. 5.* *Irenaus* also, *B. iv. Chap. xxvi.* And the Author of the *Synopsis* of the Holy Scripture, among the Works of *Athanasius*, discoursing on the fifth of *St. Matthew*, says, ἐπιτείνει ἐν τῷ νόμῳ ἐντολάς, *Christ enlarges the Precepts of the Law.*

(h) That of Tythes] So does *Irenaus* use this Law among Christians, *B. IV. Ch. xxxiv.* and *Chrysostom*, about the end of the last Chapter of the first to the *Corinthians*, and the ii. 10. of the *Ephesians*.

C H A P. II.

Whether 'tis ever Lawful to make War.

HAVING view'd the Sources of Right, let us proceed to the first and most general Question, which is, Whether any War be Just, or whether 'tis ever Lawful to make War?

That to make War is not contrary to the Law of Nature, prov'd by Reasons.

Gel. xii. c. v.

I. 1. But this Question, as well as those which follow, is to be first examin'd by the Law of Nature. Cicero learnedly proves, both in the Third Book of his Bounds of Good and Evil, and in other Places, from the Writings of the *Stoicks*, that there are some *First Principles* of Nature, which the *Greeks* call *τὰ πρώτα κατὰ φύσιν*, others, *Consequential*, yet such as are to be preferr'd before 'em. What he calls the first Principles of Nature, are, the Self-love born with every Animal, his Desire of Preservation in Body and Estate, his Choice of Things proper to continue him in that Condition; but his Aversion to Death, and to every thing which threatens it. Hence comes it, says he, that there's no Man left to his Choice, who had not rather have all the Members of his Body perfect and fit for Use, than deform'd and unfit: And that 'tis the first Duty of every one, to preserve himself in his natural State, next to get those things which are agreeable to Nature, and to chase those away which are Repugnant.

2. These (a) things being premis'd, our next Duty is to comply with Reason, and pursue those things

(a) *Those things being premis'd.* Seneca says in the cxxiv. Epist. As Nature never accomplishes its own good, till compleated; so neither does Man, till Reason is perfected in him.

things that are most agreeable to it, as far preferable to any Corporeal Gratifications, and consequently to observe the Rules of Honesty and Justice, before those of our natural and sensitive Appetites; for the Principles of Nature conduct us to right Reason, which (*b*) should be much dearer to us, than those things which bring us to it. Since these things are positively true, and easily allow'd by Men of solid Judgment, without any farther Demonstration, we must then, in examining the Law of Nature, search out what is most agreeable to those Beginnings, or first Principles of Nature; and then proceed to that, which tho' of later Original, is yet more honourable, and not only to be accepted of, when granted, but also by all means desirable.

3. But that which we call Honest, for the diversity of the Matter, is sometimes taken so strictly, as to consist (as I may say) in a Point, from which if one errs in the least, he falls into Vice; and sometimes it is taken more largely, for that which may be commendably done, and yet without blame left undone, or done in another manner. As there is no intervening Circumstance, no middle State between *Being*, and *Not-being*: Whereas in other Opposites, as *White* and *Black*, there is somewhat interpos'd, either mixt with both, or partaking a little of each. And concerning things honest in this latter Sense, all Laws both Divine and

(*b*) Which should be much dearer to us.] Seneca says, Ep. lxxvi. That is best in every one, to which he was Born, and for which he is valu'd. Then what is best in Man? Why, Reason. See also, cxi. and cxiii. Ep. Juvenal says, Sat. xv.

Mellius nos

Zenonis. — &c.

By Zeno's Doctrine we are taught, 'tis true,
For Life's Support no harmless thing to do.

Tate.

and Human are chiefly concerned, making that a perfect Debt, which before was only commendable. When we treated of the Law of Nature above, it was asked, whether any thing might be done not unjustly? And I have at last determin'd that to be unjust, which has a necessary Repugnance to rational and social Nature.

Among the first Principles of Nature there is nothing repugnant to War; nay all things rather favour it: For both the End of War (being the preservation of Life; and Limbs, and either the securing, or getting things necessary to its Welfare) is very agreeable to those first Principles of Nature; and to make use of Force in case of Necessity, is in no wise disagreeable thereunto. Since Nature has given to every Creature Strength to defend and help it self. *All Creatures, says Xenophon, understand some way of fighting, which they learnt no where but from Nature.* So 'tis in a Fragment of Ovid's *Haliuticon*; or, *Art of Fishery*:

*Each Creature does his proper Weapons know,
To save himself, and to offend his Foe.*

And in Horace,

*The Wolves with Teeth; with Horns the Bulls begin:
And whence, but from a secret Guide within? Creech!*

But Lucretius more fully.

*All know their Powers, they are by Nature shown:
Thus (c) tender Calves with naked Fronts will run,
And fiercely push before their Horns are grown.*

Creech.

Which

(c) Thus tender Calves.] The Calf, with unborn'd Brow, desires to fight, *Martial*. *Porphyry* says, in his Illd Book of not eating Animals; Every living Creature knows its weakest and strongest Part,

Which *Galen* thus expresses, *We see every living Creature employ his strongest part in his own defence; the Calf threatens with his Head, tho' his Horns be not yet grown; the Colt kicks with his Hoofs, tho' yet tender; and the Whelp snarles with his Teeth, as yet but weak.* And the same Author tells us in his First Book *Of the Functions of the Members*, That Man is a Creature by Nature fitted for Peace and War; who was not indeed born Arm'd, but (d) with Hands proper to furnish, and make use of Arms, which we see the very Infants do of their own accord, without being taught. So *Aristotle* in his fourth Book of the Parts of Animals, Chap. x. says, Man has a Hand instead of a Spear, a Sword, and other such Weapons; as being capable of taking and using them all.

But Right Reason, and the Nature of Society, which is to be examin'd in the second and chief Place, does not prohibit all manner of Force, but only that which is repugnant to Society, that is, which invades another's Right. For the Design of Society is, that every one should safely enjoy his
 F own

Part, takes care of the one, and uses the other. So a Panther uses his Teeth, a Lion his Paws and Teeth, a Horse his Hoof, and a Bull his Horns. *St. Chrysostom* says, B. xi. of Images, Those Creatures, which are void of Reason, have Arms in their very Bodies: A Bull has Horns, a Boar his Tusks, and a Lion his Paws. But God has not given me Arms in, but out of my Body; thus shewing Man to be a gentle Creature, and that I have not always occasion for such Arms: For I often lay down my Weapon, and sometimes take it up. As I'm therefore more free and unconfin'd, and not always oblig'd to carry Arms, God has made 'em separate from my Nature — Which last Words admirably well agree with those of *Galen* in the Context.

(d) *But with Hands.* *Cassiodore* says, in his Book of the Soul; Because Man's Body is not form'd to vindicate it self, as those of other Creatures are, by Horns, or Teeth, or Flight, he has Arms, and a strong Breast granted him, to defend himself from any offer'd Injury with his Hand, and guard himself, as with a Buckler, by the Interposition of his Body.

own in particular, by the common Power and Agreement, which may easily be presum'd to have been in force, tho' (what we now call) Dominion had never been introduced. For our Lives, Limbs, and Liberties, had then been properly our own, and could not have been (without open Injury) taken from us. So also, to have made use of Things that were then in common, and to have spent them, as far as Nature required, had been the Right of the Possessor: And if any one had pretended to invade that Right, he had been guilty of a manifest Wrong. But since Dominion has been confirmed either by Law or Custom, this is more easily understood, which I shall express in the words of Tully; *If every Member (of the Body) did really think, that it should enjoy a larger share of Health, if it could attract to it self the Nourishment of the next Member, and should thereupon do it, the whole Body would of necessity languish and decay: So if one Man were allowed to appropriate to himself the Goods of another, and enrich himself by the Spoils of his Neighbour, Human Society and Commerce would quickly be dissolved. For as it is natural for every Man to feed and cherish himself with the Comforts of Life, rather than another; so it is highly unnatural for any one to add to his own Estate, by the Spoils and Plunders of another.*

It is not then against the Nature of Human Society, for every one to provide for, and take care of himself, so it be not to the Prejudice of another's Right; and therefore that Force which does not invade the Right of another, is not unjust; which the same Cicero has thus expressed. *Since there are but two ways of Disputing, the one by Argument, the other by Force; and the former being peculiar to Man, and the other to Beasts, we must have recourse unto the last, when the first cannot*

cannot prevail. And again, *What can be done against Force, but by Force? And in Ulpian, To repel Force by Force is naturally lawful.* So in Ovid,

Armaque in armatos sumere jura sinunt.

Arms against Arms the Laws indulge us All.

II. What I have said already, that every War is not repugnant to the Law of Nature, may be further proved from sacred History. For when *Abraham*, arming his hired Servants and Confederates, had vanquish'd the four Kings which had plundered *Sodom*, God was pleased, by his Priest *Melchisedech*, to approve of his Action; for thus said *Melchisedech* to him, *Blessed be the most high God, who hath delivered thine Enemies into thine Hand*, Gen. xiv. 20. Yet had *Abraham*, (as appears from the place) taken up Arms without any special Warrant from God; but moved thereunto by the Law of Nature, being a Man not only very Holy, but also very Wise, as is testified of him by Strangers, *Berosus*, and *Orpheus*. I shall not instance in the seven Nations, whom God delivered up to be destroyed by the *Israelites*, because they had a special Commission from God to execute this Judgment upon them for their notorious *Abominations*. Wherefore those Wars in Holy Writ are called the Battles of the Lord properly, as being undertaken by the Command of God, and not the Will of Man. More to our purpose is the War made by the *Israelites*, under the Conduct of *Moses* and *Joshua* against the *Amalekites*, who had invaded them first in a Hostile manner, *Exod. xvii.* which tho' God had not commanded to be done, yet he approved it being done.

II. Prov'd
by History.

And further, God himself prescribed to his People certain general and established Rules of making War, *Deut. xx. 10, 15.* thereby plainly shewing, that War might sometimes be Just, even without a special Command from God; for there he makes a manifest difference between the Cause of those seven Nations, and that of other People. And since he does not set down for what particular Reasons they might make a just War, he thereby implies, that they may be easily discovered by the very Light of Nature. Such was the Cause of the War made by *Jephtha* against the *Ammonites*, in defence of their Borders, *Judges xi.* and afterwards by *David* against the same People, for affronting his Embassadors, *2 Sam. x.* And it is very remarkable, what the Author to the *Hebrews* records, that *Gideon, Barack, Sampson, Jephtha, Samuel*, and others, by faith subdued Kingdoms, waxed valiant in fight, put to flight whole Armies of the Aliens, *Heb. xi. 33, 34.* in which place (as we may gather from the Context) under the notion of Faith, is included, their assured Confidence, that what they did was pleasing to God. And upon this account, *David* is said, by a wise Woman, to fight the Lord's Battles; that is, to make Pious and Just Wars, *1 Sam. xxv. 28.*

III Prov'd
by Consent.

Orat. for
Milo.

III. What we have here proved from Holy Writ, may be also confirmed, by the General Consent of all, or at least the wisest Nations. Concerning Force in Defence of our Lives; *Cicero* gives us the Testimony of Nature her self. This (says he) is not a written, but a Law born with us, which we have not learnt, received or read, but taken and drawn from Nature it self; a Law to which we have not been instructed, but form'd, not educated, but fram'd; that if our Lives be brought into danger by force or fraud, either by Robbers, or open Enemies,
(e) all

(e) all Means that we can use for our Preservation, are just and honest. And again, This, Reason has taught the Learned, and Necessity the Barbarians, Custom the Nations, and Nature her self the wild Beasts, at all Times to repel, by any Means whatsoever, all Force (or Violence) offered to our Bodies, our Members, or our Lives. Caius the Lawyer says, Natural Reason allows us to defend our selves against danger: And Florentinus the Lawyer, that it is but just, that, whatever any one does in his own Corporal Defence, should be held lawfully done. Josephus observes, That it is a Law of Nature, fixed in all living Creatures, to be desirous of Life; and that we therefore look on them as our Enemies, who would openly deprive us of it.

And this has so much of manifest Equity in it, that even in Beasts, who (as I said before) have nothing of real Laws among them, but a kind of Shadow of it, we distinguish between the Force which wrongfully assaults, and that which only defends. For when *Ulpian* had said, (f) that a Creature without Sense, that is without the Use of Reason, is incapable of doing Wrong, he immediately adds, when Rams or Bulls fight, and kill one another, by the Law of *Q. Mutius*, they made a Distinction, so that if the Aggressor were killed, the Action fell, but if the Assaulted, then it was good; which may be explained by that of *Pliny*. *Lions do not exercise their Fierceness upon Lions, nor Serpents upon Serpents, but if Violence be*

F 3

of

(e) All Means.] *Quintil.* vii. Chap. 11. Self-Defence ought to be first regarded in every Creature, because Nature delights more in our own Safety, than the Destruction of our Adversaries.

(f) In like Manner says *Seneca* of Beasts, so those Creatures also, who can't understand, and esteem a Benefit, are influenced by the Constancy of a steadfast Obligation. See the whole Passage in the first Book of Benefits, Chap. iii. and compare it with what we have added to the Preface out of *Philo*.

offered them, there are none so Tame, but will exert their Anger, none so Patient of Injury, but upon receiving Hurt, will make an active and vigorous Defence.

IV. That War is not contrary to the Law of Nations,

IV. By the Law of Nature then, which may also be called the Law of Nations, it is plain, that all War is not to be condemned. History, and the Laws and Customs of all People, fully inform us that War was not disallow'd of by the Voluntary Law of Nations: (g) Nay, *Hermogenianus* declares, that Wars were introduced by the Law of Nations, which I think ought to be interpreted somewhat different from what it generally is, viz. That a certain form of Wars was introduced by the Law of Nations, which by the Right of Nations gives peculiar Properties to those Wars that admit it; whence arises that Distinction which we shall hereafter make use of, between a War solemn by the Law of Nations, which is also called Just, (that is full and compleat) and a War not solemn, which yet does not therefore cease to be Just, that is agreeable to Right. For the Law of Nations does neither allow, nor condemn other Wars (provided the Cause be Just) as shall hereafter be more fully declared. *By the Law of Nations* (says *Livy*) *it is allowed to repel Arms by Arms.* And *Florentinus* declares it to be the Law of Nations to repel Violence and Wrong in Defence of our Lives.

V. That the Voluntary Divine Law before Christ was not against it, proved; and the Objections answered.

V. There is a greater Difficulty concerning the Voluntary Divine Law: But let none here ob-

ject

(g) The Writer of the famous Lives in *Themistoelas* declares, That the *Athenians* had by his Advice, (as they might have done by the Common Right of Nations) enclosed within Walls their publick Country, and Household Gods, the better to secure them from the Enemy.

ject that the Law of Nature is unchangeable, and that God himself cannot decree any thing against it; for it is true, as to those things, which the Law of Nature either positively forbids or commands; but not as to those that are barely allowed by the Law of Nature; for they, as not belonging properly to the Law of Nature, but independent on its Power, may be either prohibited or commanded. The first Objection then against War brought by some, is that Law given to *Noah*, and his Posterity, *Gen. ix. 5, 6.* where God thus speaks, *Surely the blood of your lives will I require; at the hand of every beast will I require it; and at the hand of man, at the hand of every man's brother will I require the life of man. Whosoever sheds man's blood, by man shall his blood be shed; for in the image of God made he man.* And here some take the Phrase of requiring Blood in a general Sense, and the other of shedding Blood to be a Commination or Threatning, and not an approving, neither of which is to be allowed; for the forbidding to shed Blood, reaches no farther than that in the Law, *thou shalt not kill*; which neither disproves Capital Punishments, nor a lawful War. Therefore does neither the one nor the other Law so much command any thing new, as it does declare and revive the Law of Nature, defaced by long and wicked Custom. Wherefore those things are to be understood in that Sense, which implies a Crime: As by Murder we understand not the killing of any Man, but the premeditated killing it, and that, of an innocent Person. But what follows of shedding Blood for Blood, seems to me not so much to refer to the bare Fact, as to the Right of it.

I thus explain the Case. It is not naturally unjust, that a Man should suffer himself as much E-

vil, as he has caused (to others); according to that which is called the Law of (b) *Rhadamanthus*.

To suffer what one does, is Just and Right.

And *Seneca* the Father pronounces this Sentence, *It is the most equitable Rule of suffering, that every Man should undergo the same Punishment himself, which he designed for another.* From a Sense of this natural Equity, *Cain*, guilty of Parricide, says of himself, *Gen. iv. 14. Whosoever finds me shall kill me:* But God in those early Days, either upon the account of the Scarcity of Men, or because there was less need of an Example, by reason there were yet but few Offenders, did by his Order restrain that which seemed naturally Lawful; and condemned this Manslayer to be a Vagabond, excluding him from all Commerce and Contracts; but spared his Life. As *Plato* also appointed in his Laws; and *Euripides* informs us, that it was practised by the old Greeks, in these Verses:

*Justly were Murderers by our Fathers sent
To mourn their Crime in lonely Banishment,
And not by Death ———*

To which we may refer that of *Thucydides*, *It is probable, (i) that in former Days heinous Crimes were*

(b) In *Apollodorus's* Book IId. the Law of *Rhadamanthus* is, Who-soever shall avenge himself on him that first assaulted him, shall not be punished.

(i) *Servius* on the first Book of the *Eneids*. You shall suffer, you shall pay for it. And this word. *Perfolvensis*, is taken from *Mony*; for the Punishments of the Ancients were Pecuniary. And on the IId, *Expendere*, to suffer is also derived from *Mony*. For formerly Punishments were Pecuniary, when in that yet Rude Age *Mony* was deliver'd out by *Weight*; which (weighing of *Mony*) was afterwards us'd to signify a Capital Punishment. And on the VIth, *Pendere* comes from a Pecuniary Condemnation. And *Pliny* tells us in his VIIth Book of *Nat. Hist.* that the first Sentence of Death was pass'd in *Areopagus*.

were slightly punished, but when in time these Punishments came to be despised, they were changed into Death. And *Lactantius*, As yet it was reputed a Sin to put even the greatest Offenders to Death.

Grounding their Conjecture of the Divine Will from that remarkable Instance (of *Cain*) it came to be a Law; so that *Lamech* having committed the (k) like Fact, from this Example promised himself Impunity, *Gen. iv. 24.*

But though before the Flood, in the Times of the Giants, Murders were frequent, and uncontrouled; yet Mankind being restored after the Deluge, God was pleased to restrain them by severe Punishments, lest the same wicked Custom should again prevail; and, suppressing the Lenity of the former Age, what Nature declared not to be unjust, he also allowed, that he who killed a Manslayer (l) should be innocent. Which afterwards, upon erecting Tribunals of Justice, for considerable Reasons was transferred solely to the Judges; yet so, that some Track of that ancient Custom was to be seen, in the Right granted to him that was next of Kin to the Person killed, *Numb. xxxv.* even after the Law of *Moses*, of which I shall treat more largely hereafter.

We have the great *Abraham* to justify this Interpretation, who not being ignorant of the Law given to *Noah*, took up Arms against the four Kings, which he believed not to be repugnant to that Law. So *Moses* commanded the People (of *Israel*) to fight against the *Amalekites* that assaulted them, following the Law of Nature; for it does not appear that he particularly con-

(k) Or rather, if he should commit such a Fact; for the Words of *Moses* allow this Sense.

(l) In *Josephus*, I charge you to keep your Hands from human Blood, and if any one commit Murder let him suffer for it.

Ex. 17. 9. consulted God in this Case. Besides, Capital Punishments were not only inflicted on Murderers, but also on other notorious Offenders, and that not only practised among the *Gentiles*, but even Gen. 38. 24. among the Patriarchs themselves.

Concluding by natural Reason, that it was consonant to the Divine Will, that the Punishment appointed for Manslayers, might not unjustly be inflicted on other most heinous Offenders; for there are some Things which we prize equally with our Lives, as Reputation, Virgin-Chastity, conjugal Fidelity, and those Things without which our Lives cannot be safe, as Reverence to our Sovereigns, against which those that offend are to be accounted as bad as Murderers.

Hither we may refer that ancient Tradition among the *Hebrews*, that God gave more Laws to the Sons of *Noah*, which were not all recorded by *Moses*, as thinking it enough to include them afterwards in the peculiar Laws of the *Hebrews*. Thus it is plain from *Levit. xviii.* that there was an ancient Law against incestuous Marriages, though not mentioned by *Moses* in its proper Place. Among those Commands of God to the Sons of *Noah*, they say this was one, that not only Murders, but also Adulteries, Incests and violent Rapes should be punished with Death.

Job 31. 31. Which the words of *Job* seem to confirm. But the Law delivered by *Moses* gives the Reasons for these Capital Punishments, which, were as much in force among other Nations, as the *Hebrews* themselves; and particularly it is said of Murder, Lev. 18. 24, 15, 27, 28. that the Land cannot be cleansed but by the Blood Pl. 101. 5. of the Slayer. Besides, it would be absurd to Pro. 20. 8. think, that the Jews were so peculiarly indulged, Num. 35. 31, 33. as to be allowed to secure their publick and private

vate Safety by Capital Punishments, and to defend themselves by War; and at the same time all other Nations should be denied the same Privilege. Neither do we find the King or People at any time informed by the Prophets, that God did not approve of their Capital Punishments, and frequent Wars, as they were often reprov'd for their other Sins.

Nay on the contrary, who would not think (since the judicial Laws of *Moses* had the perfect Impression of the Divine Will) but that those Nations should act rightly and piously, who had so glorious an Example? which, it is probable, the *Greeks* did follow, especially the *Athenians*; whence there is so great an Agreement of the old *Attick* Law, and from thence of the *Roman* in the twelve Tables, with the *Hebrew* Laws. This is enough to prove, that the Law given to *Noah* is not to be taken in that Sense which they imagin, who would thence conclude all Wars to be unlawful.

VI. The Arguments brought out of the New Testament against War are more plausible; in examining which, I shall not allow that, which others do, that there is nothing in the Gospel (except Points of Faith, and the Sacraments) but what is enjoyned by the Law of Nature; for that, in the Sense that many take it, I cannot think true.

VI. Certain Cautions concerning the Question, whether War be contrary to the Law of the Gospel.

1. This I freely grant, that there is nothing commanded us in the Gospel, which is not naturally honest; but that we are not farther obliged by the Laws of Christ, than by those of Nature, I have no Reason to allow.

2. And for them who think otherwise, it is strange to see how they labour to prove, that what is forbidden in the Gospel was also by the Law

Law of Nature (*m*), as Fornication, Divorce and Polygamy. Indeed these are such, that Reason it self informs us it is better to refrain from, but yet not such, as (*without* the Divine Law) were sinful. But as to that which the Christian Law commands, that we should lay down our Lives one for another, who will pretend to say, that we are obliged to this by the Law of Nature. *Justin (Martyr)* says, (*n*) *To live according to the Law of Nature, is to live like an Infidel.*

3. Neither shall I follow them, who presume to say, that Christ in his Discourses did only interpret the Mosaical Law. For those words so often repeated imply something else, (*You have heard it has been said by them of old. But I say unto you*) which Opposition, as also the Syriack and the other Translations plainly declare, that the word *Veteribus* must be rendred *to*, and not *by them of old*; as *Vobis* is *to*, and not *by you*. But those of old, are only the Contemporaries of *Moses*, and what is there mentioned to be said to them of old, was meant not as spoken by the Lawyers, but by *Moses* himself, either in those very words, or the same Sense, as *Thou shalt not kill. Whosoever killeth shall be in danger of Judgement. Thou shalt not commit adultery. Whosoever shall put away his wife, let him give her a writing of divorcement. Thou shalt not forswear thy self, but shalt perform unto the Lord thine oaths. An eye for an eye, and a tooth for a tooth* (that is, you may demand it by Law.) *Thou shalt love thy neighbour* (that

(*m*) Hither we may refer that of *St. Jerom*, The Laws of *Caesar* are one thing, and the Laws of *Christ* another; it is one thing that *Papinian* enjoins, and another that *St. Paul* does.

(*n*) The Passage in *Justin (Martyr)* is to *Zeno*: and *Origen* shews the same Opinion in his Collections called *Philocalia*.

is an *Israelite*) and hate thine enemy, (o) that is, the seven Nations, with whom they were forbid to make any League, or shew them any Mercy. To these were to be added the *Amalekites*, with whom the *Hebrews* are commanded to have an eternal War.

Ex. 24. 11.
Deu. 7. 1.
Ex. 27. 19.
Deu. 25. 19.

4. But to understand the words of Christ, we must carefully observe, that the Law delivered by *Moses* may be taken two ways; either in that Sense, that is common with all human Laws, viz. as it restrains grand Crimes by the fear of publick Punishments; and so maintains the *Hebrew* Nation in the State of a Civil Society, in which Sense it is called *the Law of a carnal Commandment*, and *the Law of works*. Or it is taken in a Sense proper to a Divine Law, viz. as it also requires the Purity of the Mind, and some Acts, which may be omitted without Temporal Punishment; in which Sense it is termed *A spiritual Law rejoicing the soul*, Palm. 19. 7. (which the *Latins* call the 18th.) The Lawyers, and *Pharisees* contenting themselves with that first Part of it (*the Carnal*) look'd on the other (*the Spiritual*) as needless, neither did they ever teach it the People; which appears plainly, not only from our Writers, but also from *Josephus* and the *Hebrew* Doctors.

Heb. 2. 2.
Heb. 7. 19.
Rom. 3. 27.

Rom. 7. 17.

5. But as to what relates to this second (*Spiritual*) part, we must know that the Virtues, which are required of Christians, were recommended, and enjoined to the *Hebrews*, but not commanded in (p) that Degree and Latitude, as to Christians.

(o) The famous *Abarbanel* upon *Deut.* xxiii. 21. says, they were allowed by the Law to hate them.

(p) See some Things relating hereunto in the Notes above at the End of the first Chapter. *St. Chrysostom* of *Virginité*, Chap. xlv. We were not of old enjoyned so great a Measure of Virtue, then we were allowed to take Revenge on those that injured us, and to return Railing for Railing; and to exact Fines; and

Christians. And in both these Senses Christ opposes his Doctrine to that of the Ancients, Whence it is plain, that his words imply more than a bare Interpretation. But that these things should be known, does not only relate to the matter in hand, but also to many other Things, lest we should give more Authority to the *Hebrew Law*, than is just.

VII. Arguments for the negative Opinion out of Holy Writ.

1. Ep. 2. 1.
2. 3.

VII. (1.) Therefore, omitting those Arguments of less weight, the first and chief Testimony, whereby we may prove that all Right of making War is not absolutely taken away by the Law of the Gospel, is that of St. Paul to Timothy. *I exhort you, that above all things, prayers and supplication, intercessions, and giving thanks be made for all men; for Kings, and such as are in authority, that we may lead (q) a quiet and peaceable life, in all godliness and honesty; for this is good and acceptable in the sight of God our Saviour, who would have all men to be saved, and to come to the knowledge of the truth.* Hence we are taught three Things: First, That it is pleasing to God, that Kings should become Christians. Secondly, That being made Christi-

and to swear but not falsely; and to hate our Enemies; and to smite out an Eye for an Eye; nor was it then forbid to indulge our selves, nor to be angry nor to put away one Wife, and take another: Nay, more than that, the Law allowed us to have two at once. Great was the Indulgence of those Times, in these and other like Cases. But since the coming of Christ, the way is made much straiter. And in the same Book, Chap. lxxxiii. The same Measure of Virtue is not required of us, and them.

(q) Seneca in his 73d Epistle says, That they that are truly devoted to Philosophy, are unjustly reputed Contemners of Magistrates and Kings. On the contrary, says he, none respect them more, and that not unjustly, for they Benefit none more than those who would live quietly and at Ease. The Epistle deserves reading, where there is also this Passage; The Advantage of this Peace is, that it influences all, but more particularly those that make a right Use of it,

Christians, they still continue Kings; which *Justin Martyr* thus expressed, *We pray, that Kings and Princes may, together with their Royal Power, be found to have sober prudent Thoughts;* and in the Book entitled, *The Constitutions of Clement*, the Church prays (r) *χρησιανὰ τὰ τέλη*, for Christian Magistrates. And Thirdly, That Christian Kings should contribute their utmost to the Quiet of others, as a thing acceptable to God.

But how? He explains This in another Place: *He is the minister of God to thee for good; if thou do ill then be afraid, for he beareth not the sword in vain; for he is God's minister, an avenger to execute wrath upon them that do evil.* Under the right of the Sword is comprehensively meant every Right of Punishing, as also sometimes among the Lawyers; but yet so, that its principal Part, the true use of the Sword, be not excluded. The second Psalm may not a little help to explain this Place; which Psalm, tho' it was really verified in *David*, yet does it more fully and perfectly relate to Christ, as we may learn from *Acts* iv. 25. xiii. 33. and *Heb.* v. 5. But that Psalm advises all Kings to kiss the Son with Reverence, that is to shew themselves his Servants as Kings, as *St. Austin* rightly expounds it, whose words relating to this Subject I shall here set down. *In this, Kings serve God, according to the Divine Command, as they are Kings, when they promote Goodness, and discourage Wickedness in their Kingdom, not only in Things that have Relation to human Society, but also in those which appertain to religious Worship.* And in another Place, *How then do Kings serve the Lord in fear, unless by prohibiting, and punishing with a religious Severity, all Transgressions of the Commandments of God? For he serves*

(r) Unless you had rather interpret it, the Christian Ends of Life.

serves God one way, as a Man, and another as a King. And a little after, *Herein Kings serve God, as Kings, when they do for his Service, what they could not perform, unless they were Kings.*

(2.) That Place, which I have before quoted in the 13th to the *Romans*, affords us a second Argument, where the highest Power, such is a Regal, is said to be of God, and is called the Ordinance of God; whence we infer, that we must pay him Obedience and Honour; and that out of Conscience; and that he who resists it resists God himself. If by Ordinance we only understand, what God only permits, as he does Acts that are sinful, then no Obligation would follow of Honour or Obedience, especially relating to the Conscience; otherwise the Apostle had said nothing, when he so highly magnified, and commended this (*Regal*) Power, but what he might have said of Thefts and Robbery. We must therefore of necessity understand this Power, as particularly approved of by God; whence we may readily infer, (since God cannot *will* Things contrary to himself) that this Power is not repugnant to the Will of God, revealed in the Gospel, and is Obligatory to all Men.

Neither does it prejudice our Argument, that the Sovereign Princes, at the time when St. Paul wrote this, were Strangers to Christianity. For first, this is not universally true; for *Sergius Paulus*, Deputy of *Cyprus*, had long before professed the Christian Faith; to omit what is reported of the Prince of (*s*) *Edeffa*, perhaps intermixt with some Falsities, but which seems to derive its Original from Truth. Besides, the Question is not about

(*s*) *Edeffa* is a City in *Osroene*; the Name of *Abgarus* is common in those Countries, as appears as well from the Coins published of Old by *Tacitus*, *Appian* and *Dion*, as from latter Collections by *Capitolinus*.

about the Persons, whether they be wicked; but whether that Function in them be wicked; which we say the Apostle denies, where he says it is ordained of God even for that time, and therefore to be honoured, even with our inward Thoughts, where God only does peculiarly Reign. Then (the Emperor) *Nero*, and King *Agrippa* (whom St. *Paul* so earnestly invites to the Christian Faith) might have turned Christians, and yet have retained their Sovereignty, the one his Regal, the other his Imperial, which cannot be understood without the Right of the Sword and of Arms. Then as formerly under the Law the Sacrifices were Holy, tho' offered by wicked Priests; so (1) Government is Holy, tho' administered by a wicked Person.

Acts 16.

(3.) The third Argument is taken from the words of St. *John* the Baptist, who being asked by the Jewish Soldiers (many thousands of whom served the *Romans*, as appears from *Josephus* and other Writers) *What they should do to flee from the Wrath to come*, he did not bid them quit their Military Employment, which he ought to have done, if it had been God's Will, but only to abstain from Violence and Falshood, and to be content with their Wages. But to these words of the Baptist, which plainly allow of a Military Life, many object, that what the Baptist prescribed, did differ so much from what our Saviour commanded; that he seemed to preach one Doctrine, and Christ another. But this I cannot agree to, for both St. *John* and our Saviour declare the Sum of their Doctrine in the same terms, *Repent ye, for the Kingdom of Heaven is at hand*.

(3.) Arg.

Luk. 3. 14.

Mat. 3. 2.

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band. 4. 17.

(1) St. *Chrysostom* does rightly apply this to that place of the Epistle to the *Romans*.

Mat. 11.
12.
Mar. 1. 4.
Act. 11. 38.

Mat. 3. 8.
10.

Luk. 3. 11.

Mat. 11.

13.

Mar. 1. 1.

Luk. 1. 77.

Mat. 11. 9.

Luk. 7. 26.

Luk. 2. 77.

Luk. 3. 18.

Act. 19. 4.

Jo. 1. 29.

Mat. 3. 21.

Mar. 1. 8.

Luk. 3. 16.

(4.) Arg.

band. And Christ himself says, the Kingdom of Heaven, (that is, the new Law, for the *Hebrews* used to call their Law by the name of Kingdom) begun to suffer Violence from the Days of *John* the Baptist. *John* is said to preach the Baptism of Repentance for the Remission of Sins; so are the Apostles said to do in the Name of Christ. *John* required Fruits meet for Repentance, and threatens Destruction to those that did not bring them forth. He also requires Works of Charity above the Law. The Law is said to continue unto *John*; that is, from him a more perfect Law did begin. And the beginning of the Gospel is reckoned from *John*; for this Reason *John* is called greater than the Prophets. That he was sent to give Knowledge of Salvation to the People. To preach the Gospel. Neither does *John* ever distinguish *Jesus* from himself by any difference of Doctrine (tho' what *John* declared more generally, and confusedly, and by way of Instruction, Christ, the true Light, delivered distinctly,) but by this *Jesus* was the promised Messias, the King of a Heavenly Kingdom, who should give the Power of the Holy Ghost to those that believed on him.

(4.) The fourth Argument is this, which seems to me of no small Weight. If the Right of Capital Punishments be taken away, (*from the Magistrate, by the Gospel*) and the Sword to defend the Subject from Thieves and Robbers, there would immediately follow the greatest Licentiousness of all Iniquity, and a Deluge of Evils, (*u*) when, as it is, Impiety is hardly restrained by the Judicial Power. Wherefore if it had been the Design

(u) To suppress which were Tribunals erected, and Laws, and Penalties, and so many sorts of Punishments invented, says St. Chrysostom, in his Sermon to the faithful Father.

Design of Christ to have introduced a new kind of Government, as was never heard of before, he would certainly have declared it in most distinct and plain words; as Let no Man hereafter condemn a Malefactor to die, Let no Man take up Arms, &c. which we no where read that he did; for what are brought to this purpose, are either very general or obscure. But Equity it self, and common Reason, teaches us to restrain Words too general, and to explain those that are too Ambiguous, and to recede from the Propriety and common Acceptation of the words, in order to avoid that Sense, which may bring along with it the greatest Inconveniencies.

(5.) The fifth Argument may be this, that it cannot any ways be proved, that the Judicial Law of *Moses* was abolished, 'till their City *Jerusalem* it self was destroyed, and with it both the Form and Hopes of a State was for ever lost. For neither is there in the Law of *Moses* any Term fixt to that Law; neither does Christ or his Apostles ever speak of the Cessation of that Law, unless so far as it may seem comprehended (as I said) in the Destruction of the State. Nay on the contrary *St. Paul* says, that the High Priest was appointed to judge according to the Law of *Moses*. And *Act. 23. 3.* Christ himself, in the Preface to his Precepts, said, that he came not to destroy the Law, but to fulfil it, which is easily understood to refer to the Ceremonial part; for the resembling Draughts are compleated, when the Original appears: But as to the Judicial Law, how can it be true, if Christ, as some imagine, took it away at his coming? But if the Obligation of the Law continued, as long as the *Hebrew* State it self, it follows, that the Jews who turned Christians, if they were called to any Office, could not avoid

(5.) Arg.

Act. 23. 3.

Mat. 5. 17.

it, nor judge otherwise than *Moses* had prescribed.

Having thoroughly consider'd all things, I cannot indeed find the least Cause, why any Pious Man should take those Words of Christ in any other Sense. I own, that before the coming of our Saviour, some things were tolerated (either as to outward Impunity, or inward Purity also, which I have not now occasion or leasure strictly to examine) which Christ did not allow to his Followers; as to put away a Wife for every Offence, and for a Person injured to seek Reparation by course of Law: But between Christ's Precepts, and those Permissions, there is a certain Difference, but not a Contradiction. For he that keeps his Wife, and he that privately forgives a Revenge due to him, does not transgress the Law, but does that which the Law chiefly would have done. It is quite otherwise in a Judge, whom the Law does not allow, but command, to punish a Murderer with Death; and if he neglect it, he shall be guilty before God. If Christ had forbid such a Judge to put a Murderer to Death, as being contrary to the Law, he had then dissolved it.

(6.) *Arg.* (6.) The sixth Argument is taken from the Example of *Cornelius* the *Centurion*, who received the Holy Ghost (an infallible sign of Justification) from Christ, and was baptized into the Name of Christ by the Apostle *St. Peter*; yet we no where find, that he laid down his Commission, or was ever advised to it by *St. Peter*. But some may answer, being instructed in the Christian Religion by *St. Peter*, he may be supposed at the same time to have resolved to quit his Employment. Indeed if it were certain, and could be proved that War was forbid among the Precepts of Christ, they would say something; but since that

no

no where appears, there would certainly have been at least somewhat said of it in this place, where it might have been so requisite, that future Ages might not be ignorant of the Rules of their Duty. Neither does St. *Luke* use (where the Quality of the Persons required a special change of Life) to pass such a thing over in silence, as we may see in several places, particularly *Acts* xix. 19.

(7.) The seventh Argument like to this, is taken from that of *Sergius Paulus*, (whom I lately mentioned) for in the account of his Conversion, there is no mention made of his quitting his Government, or of his being advised to do it. But when a thing is not recorded, (when, as I said before, there is a particular Necessity for it) it may be justly supposed not to have been done.

(8.) The eighth Argument is taken from the Action of (*) *St. Paul*, who understanding that the Jews laid wait for him, would have the chief Captain acquainted with it; and when the Tribune had sent Soldiers to convoy him safe, he did not refuse it, neither did he advise the Tribune, or the Soldiers, that it was displeasing to God to repel Force with Force; and yet this is that *St. Paul*, who neglected no Opportunity himself, of warning Men of their Duty, or to blame the neglect in others.

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(9.) The

(*) The *African Council* makes use of the Authority of this Passage: Against whose Violence we may desire common Assistance, and allowed in Holy Writ; when the Apostle *St. Paul*, as is recorded in the *Acts*, saved himself from the Conspiracy of the Assassins, by the help of armed Soldiers. And so does *St. Austin* frequently, as in his Lth Epistle to *Boniface*. his 154th to *Publicola*, where he has these words, *Neither if those Russians had been slain by the Soldiers, would St. Paul have been guilty of their Death.* The same in the 164th Epistle, *St. Paul* took care to procure a Guard of Soldiers.

(9.) *Arg.* (9.) The ninth Argument is, because the proper End of any thing that is honest, and just; must also be honest and just; to pay Tribute is honest; and also a Precept obliging the Conscience, as *St. Paul* expresses it; and the end of Tribute is, to enable the Sovereign Powers to protect the Innocent, and punish the Guilty. *Tacitus* speaks appositely to this purpose. *Nations can have no peace without Arms, no Arms without Pay, and no Pay without Taxes:* To which agrees that of *St. Austin*, for this cause we pay Tribute, that *Soldiers may have Money to buy them Necessaries.*

Rom. 13.
3. 4. 6.

(10.) *Arg.*
A&C. 25.
11.

(10.) The tenth Argument is taken from that place of the *Acts*, where *St. Paul* pleads thus, *If I have wronged any Man, or done any thing worthy of Death, I refuse (y) not to die.* Whence I conclude, that *St. Paul* did believe, that even after the publishing of the Evangelical Law, there were some Crimes which common Equity allow'd, and even required to be punished with Death: Which also *St. Peter* teaches. But if it had then been God's Will, that capital Punishments should be no longer used, *St. Paul* might have cleared himself; but he ought not to leave such an Opinion in the Minds of Men, as if to punish Offenders with Death, had now been less lawful than formerly. But having proved that Capital Punishments were justly inflicted after the coming of Christ, I think it also proved, that some Wars may be lawfully made, as against a Company of armed Offenders, who are to be overcome by Arms, before they will own themselves guilty.

For

(y) So *Acts* xxviii. 28. because there was in me nothing worthy of Death; and thus *Justin Martyr* in his 2d Apologetic; that they should be punished, and that by you, who live not conformably to those Precepts, being Christians only in Name, is our desire.

For tho' the Power and Resistance of Malefactors, may in prudent deliberation have some weight, it lessens nothing of the Right it self.

11. The Eleventh Argument is, that in the (11.) *Arg.* *Revelation*, (of *St. John*) some Wars of the Righteous are foretold, with manifest Approbation, *Chap.* xviii. 6. and elsewhere.

12. The Twelfth Argument may be this, that (12.) *Arg.* the Law of Christ did only abolish that Law of *Moses*, which did separate the Gentiles from the Jews; but what things were accounted honest by the Law of Nature, or by the general Consent of Civilized Nations, it was so far from taking away, that it comprehends them under the general Precept of all Honesty and Virtue. Now the Punishment of Crimes, and repelling Injuries by Arms, are by Nature reputed laudable, and referred to the Virtue of Justice and Beneficence. And here by the by we may observe the Error of them who pretend to derive the Right of the Jewish Wars, only from the Promise that God made to give them the Land of *Canaan*. Indeed this is a just Cause, but not the only one. For even before those times Holy Men did make War by the Conduct of their Reason; and also the *Israelites* themselves afterwards upon other Occasions, as *David* for the affronting of his Ambassadors. Also those things which every Man enjoys by Human Right, are not less his own, than if God had (immediately) given them to him, and that Right is not taken away by the Gospel.

Eph. 2. 14.

Phil. 4. 3.
1 Cor. 13.
13. 14.

VIII. Let us now also see what Arguments are brought by the other Party, that a pious Observer may more easily judge, which are the most weighty.

VIII. The Arguments out of Scripture for the Affirmative answered.

(1.) Arg.
Ila. 2. 4.

1. First they alledge the (2) Prophecy of *I-saiab*, who foretold, *That the Nations should break their Swords into Plow-shares, and their Spears into pruning Hooks. Nation shall not lift up Sword against Nation, neither shall they learn War any more.* But this Prophecy is to be understood, either conditionally, as many others are, as that should be the State of Affairs, (a) if all Nations would submit to the Law of Christ, and live up to it; whereunto there should nothing be wanting on God's part; for it is certain, if all were Christians, and lived like Christians, there would be no Wars: Which *Arnobius* expresses thus, *If all Persons would look upon themselves as Men, not so much from the Shape of their Bodies, as from their rational Understanding, they would then lend an Ear to his salutary and peaceable Decrees, and not proudly and haughtily obey their own Passions, rather than his Commands.* The whole World would long since have turned the use of Iron to more peaceable Instruments, they would have lived in a most delightful Rest, and continued in entire Concord, without violating the Sanctions

(2) *St. Chrysostom* applies this to that General Peace which the World enjoyed under the *Roman Empire* in his Oration. that Christ was God. Neither was it only foretold that this Religion should be stable, immoveable and unshaken, but that with it should come Peace to the whole World; that the Popular Government should cease in every City, and also Kingdoms, and that there should be one Empire over all, and most of those should have Peace, which never enjoyed it before. For formerly both Mechanics and Orators were obliged to go to War, and fight; but after the coming of Christ that Custom was left off and the Arts of War were confined to an appointed Rank of Men. You have the very same Sense in *Eusebius* of Preparation, Book 1. ch. 10.

(a) For *Justin (Martyr)* writes of the Christians, We fight not against Enemies. And as *Philo* says of the *Essenes*, You will find none among them that make either Javelins, Arrows, Swords, Helmets, Coats of Mail or Bucklers; none who either make Arms, or invent them: And so *St. Chrysostome* upon 1 *Cor.* 13. 3. If there were that Love among Men, as there should be, there would be no Capital Punishment.

tions of Solemn Leagues. And *Lactantius* thus, *What would be the Consequence, if all Men would unite in Concord? Which certainly might be done, if banishing their deadly and impious Rages, they would resolve to live innocently and justly.* Or this Place is to be understood simply; and then, it is plain that this Prophecy is not yet fulfilled; but that the Accomplishment of it, and of the general Conversion of the Jews, is yet to be expected. But take it which way you will, there can be nothing hence inferred against the Lawfulness of War, as long as there are those who will not suffer them that are desirous of Peace to enjoy it, but will offer them Violence.

Many Arguments used to be taken from the 5th of *St. Matthew*, to judge of which it is necessary, that we remember what was said a little before, *viz.* If Christ had intended to have abolished all Capital Punishments, and the Right of (*making*) War, he would have done it in most plain and special Terms, on account of its great weight and newness; and so much the more, because none of the Jews believed otherwise, than that the Laws of *Moses* relating to Judicial Affairs and the State, should be of force as long as that State continued. Being then warned of this, let us examine these Places in order.

2. The second Argument brought to defend their Opinion is out of those Words. *You have heard it has been said, an eye for an eye, and a tooth for a tooth; but I say unto you, resist not (b) evil; but if any Man strike thee on the one cheek, turn to him the other also.* For hence some infer, that no Injury is to be repelled, or

(1.) *Arg.*
Ex. 11. 13.
Mat. 5. 39.

(b) *לרשע תִּשְׁלַח פָּנֶיךָ* him that Injures thee; and as *St. Luke* in the Speech of *St. Stephen* ὁ ἀδικῶν ἡ πλησίον, he that Injures his Neighbour.

or revenged, either publickly or privately, but this the Words do not imply; for Christ does not here speak to Magistrates, but to those that are injured; nor of all Injuries neither, but of slight ones, as a Box on the Ear, for the Words following restrain the generality of the former. So in the following Precept, *If any man will sue thee at the Law, and take away thy Coat, let him have thy (c) Cloak also.* Not every Dispute in Law is here forbidden, according to St. Paul, who does not forbid all Suits. Only he forbids Christians to go to Law before the Heathen, from the Example of the Jews, who constantly believed that, *He that brings the Cause of an Israelite before Strangers, profanes the Name of God;* but Christ, to exercise our Patience, would not have us dispute for things that may be easily recovered, as a Coat, or a Cloak; and tho' they might do it with the best Right, yet they should forbear the Prosecution of the Law. *Apollonius Tyanæus* said, it was not like a Philosopher to sue for a little Mony. *There is no Judge (said Ulpian) can blame that Man, who so little values his Loss, as not to sue for it; for this Humour of him who abhors Contention is not to be condemned.* What *Ulpian* here says to be approved of by good Men, is what Christ himself commands, chusing the Subject of his Precepts from things most Honest and

1 Cor. 6. 4.

(c) Which St. Cyprian thus expounds (concerning Patience) Seek not to recover, what is taken from thee; and *Irenæus* Book 4. Ch. 27. To him that takes away thy Coat, deliver him also thy Cloak; be not grieved, as being unwilling to be cheated, but rather rejoice, as if you gave it freely. And if any Man (says he) shall compel thee to go with him a Mile, go with him t'other two, not following him as a Servant, but go before him as free. And *Libanius*, who had read the Gospels, commends those that do not Quarrel for a Garment, or a Coat, in his Oration *de Custodia Reorum.* And St. *Jerom* in his first Dialogue against *Pelagius.* The Gospel teaches us, that to him, who would sue us, and take away our Coat, we should give also our Cloak.

and Virtuous. But we cannot justly infer from hence, that it is unlawful for a Parent, or Tutor, to defend by Law that which his Child, or Pupil, cannot subsist without. For a Coat or Cloak is one thing, and one's whole Maintenance another. In *Clement's Constitutions*, it is said of a Christian, if he have a Suit depending, *Let him endeavour to end it, tho' it be somewhat to his Loss.* What therefore uses to be said of Morals, may be of force here, that they do not consist in a Point, but have their own certain Latitude.

So in that which follows, *If any Man shall compel thee to go with him one Mile, go with him two.* The Lord did not say a hundred Miles, which Journey might draw one too far from his necessary Business, but *one*, and if occasion be, *two*, which Walk may be as nothing. The Meaning then is, in things almost indifferent, we must not insist too much upon our Right; but rather yield more than is desired, (*d*) that our Patience and Kindness may be known unto all.

And it follows, (*e*) *Give unto him that asks of thee, and from him that would borrow of thee, turn not away.* If these Words were not understood as limited, it would indeed be very hard. He that takes not care of his own Family is worse than an Infidel, says *St. Paul*. Let us then imitate *St. Paul*, the best Interpreter of his Master's Law, who stirring

1 Tim 5.
8.

(*d*) *Justin* in his *ad Apologetic*, what he said, amounts to this, that we should be patient to all Men, officious (or kind) not subject to Anger.

(*e*) *Justin* in his same *Apologetic*, He spoke this, that we should bestow of our Goods to the Poor, but not with Vain-glory, *Give to every one that asks*, &c. and in another place, *give to every one that is in want*; and *St. Cyprian* in his third Book of *Testim.* 1. Alms are to be denied to no body; and again, *Give to every one that asks of thee, and turn not away from him that would borrow of thee.*

2 Cor. 8.
13.

stirring up the *Corinthians* to enlarge their Bounty to the Poor at *Jerusalem*, says, *Not that others should be eased, and you be burdened, but that by an equality (f) your abundance should supply their wants.* That is (to use *Livy's* Words on a like occasion) *that out of your Plenty, you may relieve the Necessities of others.* To which is also that of *Cyrus* in *Xenophon*. Thus we must understand the Precept to imply a reasonable Equity, as I said before.

The *Hebrew* Law allowed the Husbands the Liberty of a Divorce; as to prevent their Cruelty unto their Wives, so also to obviate all private Revenge, to which that People were extremely inclined; it allowed the injured Person to avenge himself, not indeed by his own Hand, but by the Law of Retaliation before the Judge; which the Law of the 12 Tables imitated, *He that breaks a Limb, let him suffer the like.* But Christ, the Master of greater Patience, was so far from approving this Demand of Revenge in the Person injured, that he does not allow some Injuries to be repelled by Force, or Law. But what sort of Injuries? Such as might be born, (ff) not but that this is praise-worthy, even in the most heinous, but that he is contented with a certain more limited Patience. Therefore he proposes the Example in a Box of the Ear, which does not threaten Life, nor maim the Body; but only declares a certain Contempt of us, which makes us never the worse. *Seneca*, in his Book of the Constancy of a Wise Man,

(f) *Seneca* in his second of Benefits. *I will give to the Poor*, but not so as to want my self; and *St. Chrysostom* upon this place to the *Corinthians*, God requires according to our Ability, as a Man has, not as he has not; to understand which rightly take what follows, *he commends them* (the *Thessalonians*) indeed, that they gave above what they were able, but he does not require the others (the *Achaans*) to do the like.

(ff) See *St. Chrysostom* in the same place.

Man, distinguishes an Injury from a Reproach. *The former* (said he) *is by Nature more grievous, the other more light, and grievous only to the Stately, by which they are not hurt, but offended. Such is the Dissoluteness and Vanity of our Minds, that some Men think nothing worse; thus you may find a Servant who had rather be scourged, than take a Box of the Ear; and the same Author in another place, A Reproach is less than an Injury, which we may complain of, rather than revenge. Which the Laws have not thought deserved any Punishment. So one in Pacuvius, I easily bear an Injury, so it be without Contumely: So another in Cæcilius, I can easily bear a Cross, if it have no Injury in it; nay, and also an Injury, if it be not attended with Contumely. And in Demosthenes, Neither is it so grievous to ingenuous Persons to be beaten (tho' that indeed is grievous) as to have it attended with Contumely. And the same Seneca a little lower says, That Grief (arising) from Contumely, is an Affection, which a Poorness of Spirit contracting it self, by reason of some affronting Action, or Word, produces.*

Therefore in such a Case Christ enjoyns Patience; and lest any one should object the trite Proverb, *by bearing an old Injury, you invite a new one*; he adds (g) we should also rather bear another Injury, than repel the first: Because from thence (h) no hurt comes to us, but what consists in a foolish Conceit. To turn the Cheek is a Hebraisme for to bear a thing patiently, as appears from *Isai.*

XXX.

(g) St. Chrysostom 7th to the Romans. This is a glorious Victory, to give more than he desires, and to exceed the bounds of his impious Lusts, by the Liberality of your own Patience.

(h) St. Chrysostom, 1st B. de Statuis. A Reproach is either so, or not, not according to the Design of the Venter, but the Will of the Bearer.

xxx. 6. and Jer. liii. 3. (i) to turn the mouth to reproaches, said Tacitus in his 3d Book of History.

(3) Arg.
Mat. 5. 43.
44

3. The third Argument is usually taken from the following Words in St. Mathew, *You have heard it has been said, thou shalt love thy neighbour, and hate thine enemy; but I say unto you, love your enemies, bless them that curse you, and pray for them that despitefully use you, and persecute you.* There are some who think both Capital Punishments and Wars repugnant to this Love and Kindness (to be shewed) to our Enemies and Persecutors. But that is easily answered, if we really consider that very Word of the Hebrew Law. The Hebrews were commanded to love their Neighbour; (ii) that is, a Hebrew; for so is the Word Neighbour to be understood, as appears from Lev. xix. by comparing the 17th Verse with the 18th. Nevertheless, the Magistrates were commanded to put to Death Murderers, and other notorious Offenders: Notwithstanding this, likewise the eleven Tribes justly made War upon the Tribe of Benjamin for their horrid Crime. So also David, who fought the Lord's Battles, did recover by Arms the Kingdom promised him from Ishbosheth.

Judg. 21.

But let the Word *Neighbour* more largely extend to all Men whatsoever; for all are received into common Grace; no People are accursed of God; yet what was formerly lawful against the Israelites (will still be as lawful against all) who were then commanded to be equally loved, as now all Men are; but if you urge, that under the Evangelical Law there is required a greater degree of Love,
this

(i) *Præbere* is also in the same Sense in Terence *Adelph.*

(ii) To whom a Proselyte is equal; but the Laws of not hurting extended also to those uncircumcised (Strangers) that dwelt among them, of whom we treated, Chap. 1. 16. So the *Talmudists*.

this may also be granted; provided also it be allowed (*k*) that all are not to be equally loved, but a Parent more than a Stranger: Thus also we are to prefer the good of the Righteous to that of the Wicked, and a publick Good before a private one, by the Law of a well ordered Love. Now out of Love to the Innocent, arise Capital Punishments, and Pious Wars. See the Moral Sentence which is in *Prov. xxiv. 11.* Christ's Precepts then of loving and helping every one, are to be obeyed, unless a greater and juster Love interpose: It is a known old Saying, (*l*) *that to spare all is as cruel as to spare none.* Besides, we are commanded to love our Enemies from the Example of God himself, who makes his Sun to rise upon the Wicked; but the same God does even in this Life punish some Wicked Persons, and will do it more grievously in the next. By which Argument all these Precepts to Christians concerning Mildness are at once solved, which use to be alledged to this purpose. For God is called gentle, merciful, long-suffering. (*ll*) But Holy Writ does every where declare his Wrath

Jon. 4. 21
Ex. 34. 6.

(*k*) *Tertullian* against *Marcion*. 4. The second degree of Goodness is towards Strangers, the first to our Neighbours. And *St. Jerom* in his first Dialogue against *Pelagius*. I am commanded to love my Enemies, and to pray for my Persecutors; but is it just that I should love them, as well as my Neighbours and Kinsfolks? that I shall make no Difference between my Adversary and my Friend?

(*l*) They are the Words of *Seneca*, first B. of Clemency, Chap. 2. and *St. Chrysostom* on the 1st *Corinth*. 3. 12. &c. speaking of Human Punishments, said, Men do not use them out of Cruelty but Goodness; and *St. Austin*, As there is sometimes a punishing Mercy, so there is also a sparing Cruelty. The Emperors *Valentinian*, *Theodosius* and *Arcadius*. in the 3d Law in the *Theodosian Codex*, of the Defenders of Cities. Let all Protections be taken away, which by shewing favour to the Guilty, and encouragement to the Wicked, do but promote Villany. And *Totilas* in *Procopius*, 2 *Gothic*. To offend, and to prevent the Punishment of Offenders, is equally faulty. See what is said, *Book 2. Chap. 21. §. 2.*

(*ll*) See *Cyrl*, B. 5. against *Julian*, concerning this.

Numb. 14.
18.

Rom. 13. 4.

Mat. 22. 7.

1 Cor. 4.

21. 5. 5.

1 Tim. 1.

20.

Wrath against obstinate Sinners, that is, his Design to punish them. *Moses* is famed for his extraordinary Meekness, yet he punisht Offenders, and that Capitally. We are frequently commanded to imitate the Mildness and Patience of Christ; but yet (*m*) it was Christ who grievously punisht the Rebellious Jews, and will condemn the wicked at the Day of Judgment for their Crimes. The Apostles imitated their Master's Gentleness, yet they used (*n*) the Power given them from God in the Punishment of obstinate Sinners.

The fourth Objection is taken from *Rom. xii. 17. Render to no man evil for evil: Provide things honest in the sight of all Men: If it be possible, as much as lies in you, live peaceably with all men: Dearly beloved (o) avenge not your selves, but rather give place* unto

(*m*) Add *Mat. xxi. 44. Luc. xix. 12. xiv. 17. St. Chrysostom* on *Rom. xiv.* relating the Miseries of *Jerusalem*, says, it was Christ that did this; hear him foretelling them, both in Parables, and also plainly and directly. He has the like in his second Oration against the Jews.

(*n*) *St. Chrysostom.* on *1 Cor. iv. 21. Shall I kill? Shall I maim?* As it is a Spirit of Mercy, so it is also of Severity. See also *St. Austin* of Christ's Sermons on the Mount, Book I. and others which *Gratian* quotes, 23 *Quest. 8.*

(*o*) The Vulgar Translation in this place has *defending*, but this word is often found put by Christian Writers in the Sense of avenging. *Tertullian* of Patience. If now you are lightly defended, you will be mad; if vigorously, you will be loaded. What have I to do with Revenge? The *Measure* of which, I know not how to govern through impatience of Sorrow: against *Marcion 2.* For it does not only relate to the Liberty of mutually exercising Revenge, but refers to the restraining of all Violence in general, and because it would seem long, and almost incredible to an obstinate unbelieving People to expect Defence from God, it was to be denounced afterwards by the Prophet, *Defence (or Vengeance) is mine, and I will defend (or avenge)* says the Lord: In the mean while the committing an Injury should be qualified by the fear of its being return'd: And the Liberty of punishing an Offence should be the forbidding of the Offence it self; that so crafty Wickedness might cease; whilst the one

unto wrath; for it is written, *vengeance is mine, I will repay,* saith the Lord: Therefore if thine enemy hunger, feed him; if he thirst, give him drink; for in so doing thou shalt heap coals of fire upon his head: he not overcome of evil, but overcome evil with good. But here also we may give the same Answer as to the former; for when God said, *Vengeance is mine, I will repay,* at the very same time both Capital Punishments were inflicted, and Laws prescribed for Wars. They are also commanded to do good to their Enemies (that is, if their Countrymen.) But these (as I said) no ways hindered Capital Punishments, nor just Wars even against those very *Israelites*. Wherefore neither can the same Words now, or the like Precepts, tho' taken more largely, be wrested to such a Sense; and the less, because the Division of Chapters were not made by the Apostles, or in their time, but much later, to regulate the reading of it, and for the more easie quoting of the places. Wherefore what now begins the 13th Chapter, *Let every Soul be subject to the higher powers,* and what follows, was joyned to those Precepts of not taking Revenge.

Ex. 23. 4. 5.

But in this Discourse St. Paul says, that the Publick Powers are God's Ministers, and *Revengers to execute Wrath* (that is, Punishment) upon those

is allowed, the other is discourag'd; and if the first be dreaded, the second will not be affect'd, by which means too the Fear of a Retaliation will at another time, through a Sense of Suffering the same, make an easier and more lasting Impression. For there's nothing more severe and shocking, than to feel that our selves, which we have occasion'd others to endure. And in his Discourse of Marrying but one Wife; Other Sins called down a Deluge; they, whatever they were, semel defensæ, were once avenged, but not seventy times seven, as double Marriages deserv'd. The Place of St. Paul, on which he is treating, is very well explain'd, by St. Austin in his clivth Epist. And from hence it is said, let us not resist Evil, lest we delight in Revenge, which feeds the Mind with other Man's Misfortunes. See below, B. II. c. xx. § v. and § x.

those that do evil: Most plainly distinguishing in that very thing between Revenge on the account of the publick Good, which is required (*by the Magistrate*) in God's stead, and is to be referred to the Vengeance reserved by God; and that *private and particular Revenge*, which he had a little before forbid. For if we would comprehend even that Revenge which is required for the Sake of the publick Good in that Prohibition, what were more absurd than, when he had bid them abstain from Capital Punishments, to add immediately, that the publick Powers were ordained by God to this end, to execute Punishments in God's stead?

(*f.*) Arg. (*f.*) The fifth place which some make use of is, 2 Cor. 10. *tho' we walk in the flesh, we do not war after the flesh, for the weapons of our warfare (p) are not carnal, but mighty through God, to the pulling down of strong holds, &c.* But this place makes nothing to the purpose; for both what went before, and what follows, declare that by the Word *Flesh* St. Paul there meant the weak State of his Body, as to outward appearance, upon which account he was contemptible. To this St. Paul opposes his own Weapons, that is, the Power given to him as an Apostle to compel the refractory, which he used on *Elymas the Sorcerer, the Incestuous Corinthian, Hymeneus, and Alexander*. He therefore denies this Power to be Carnal, that is, weak, nay, on the contrary he affirms it to be most strong. What is this to the Right of Capital Punishments, or of War? Nay, on the other side, because the Church at that time was destitute of the Assistance of the publick Powers, therefore God raised up that prodigious Power for its Defence; which began

(*p*) St. Chrysostom in this place, by *ὅπλα σαρκικά*, Carnal Weapons, understands *πλεον, δόξαν, &c.* Riches, Glory, Power, Eloquence, Subtily, Circumventing, Flatteries, Falshoods.

began to fail, almost as soon as the Christian Emperors protected the Church, as Mannah ceas'd as soon as the *Israelites* were come into a fruitful Country.

(6.) The sixth place produced is, *Put on the whole Armour of God, that ye may be able to stand against the wiles of the Devil; for we wrestle not against flesh and blood* (put in, only, after the manner of the *Hebrews*) *but against Principalities, &c.* He speaks of that Warfare which Christians have, as Christians, not of that which they may have in common with other Men upon certain Occasions.

(6) Arg.
Ephes. 6.
11, 12.

(7.) The seventh place that is brought is, *From whence come wars and fightings among you? come they not hence, even from your lusts, that war in your members? ye lust, and have not: ye kill, and desire to have, and cannot obtain: ye fight and war, and yet ye have not, because ye ask not; ye ask and receive not, because ye ask amiss, that ye may consume it upon your Lusts.* This contains nothing general; it only says, that those Wars and Fights with which the dispersed Jews were at that time miserably harrassed among themselves (part of which History we meet with in *Josephus*) did arise from wicked Causes; and that the Case is the same still, we know, and lament. That of *Tibullus* has a Meaning not unlike this Passage of *St. James*.

(7) Arg.
James, 4. 1,
2, 3.

Gold first gave Rise to War — No Wars were known, Whilst Beechen Goblets were in Use at Feasts.

And we find it remarked often in *Strabo*, that those Nations (q) lived most innocently, whose

H 2

Deit

(q) *Philo* says the same of a Contemplative Life, quoting that of *Homer*.

Γλαυκώτερον ἀβίωσι δίκαιοι ἀνδράπων,

The Justest People They
Who fed on Poverty and Milk.

And

Diet was most simple. What *Lucan* says is agreeable to this —

*O Luxury, Lavish, Profuse and Vain!
Ne'er satisfy'd with small Provision!
Ambitious Hunger! Pride of Gawdy Tables,
Which Seas and distant Lands are drain'd to furnish!
Learn with how little Life may be prolong'd,
And what 'tis Nature needs.
No old and costly Wines can raise the Sick,
Tho' drunk in Gold or Myrrh. The Limpid Stream
Will better quench a Fever, and restore
Lost Health. Water and Bread's sufficient Diet.
What wretched Fools for that to draw our Swords,
Which every River, every Field affords!*

To which we may add that of *Plutarch* in the Contradictions of the Stoicks. There is no War among Men, but what arises from Vice (r); one from the desire of Pleasures, another from Covetousness, and

And *Justin* of the *Scythians*; They covet nor Gold nor Silver, as other Nations do. And again: This Temperance begot in them a wonderful Justice, that they desired nothing belonging to another; for there is the eager desire of Riches, where is also the use. And there is a remarkable Place in *Greg. B. 2.* on the same Opinion of the *Scythians*, where *Taxiles* said to *Alexander*, What necessity have we (O *Alexander*) for Wars and Battles, since you came hither neither to take away our Water, nor our necessary Food; for which only Men of Reason should make War. And hither we may refer the Saying of *Diogenes*; For neither Thieves nor Promoters of War, are found among them that live upon course Food. And *Porphyry*, Book 2, of not eating Animals; Whatsoever is easily got, and at a small Charge, conduces to perpetual and universal Piety.

(r) What hurt can there be in confirming this most true, but too little regarded, Sentence, which is largely and pompously press'd by the Ancients, with the no less efficacious Words of others? *Athenaus* the Philosopher says in *Diogenes Laërtius* —

*To Wretches toil in ill — Unbounded Lust
Provokes you headlong into Wars and Brawls.*

Fabianus

a Third from an immoderate Ambition of Honour and Empire. Justin commending the Manners of the Scythians, says, And I wish that the rest of Mankind
bad

Fabianus Papirius says in the Controversies of Seneca the Elder—
Behold! The Disciplin'd Armies stood ready often to engage Fellow Citizens and Kinsmen, the Hills were cover'd with Horses, and afterwards the whole Country is amaz'd at the Bodies of the Slayers, at the multitude of Carcasses, and of Plunderers; if any one should ask what cause has forced Men to commit such villanous Acts against one another? for neither do Beasts make War amongst themselves; or if they did, would the same become Men, a peaceable Kind, and next to the Divinity. What violent Rage moves you, when you are the same Stock, and the same Blood? or what Furies have hurried you to a mutual Destruction? what Evil so great is brought upon Mankind, either by Chance or by Destiny? What, that their Feasts may be set out with Cups, and their Houses shine with Gold; was Parricide of so great a value? Great and commendable things indeed they are, for which they chuse rather to behold the Table, and cieled Roofs, than the Light with Innocence. Must we seek the Slavery of the World, that nothing may be denied to our Belly and our Lust? Why at last are those pernicious Riches so coveted, unless it be to be left to our Children? Philo on the Decalogue. The Love of Money, or Women, or Glory, or indeed of any thing which produces Pleasure, is it the occasion only of small and common Evils? For this, Kinsmen are estranged from Kinsmen, their Kindness being changed into an irreconcilable Hatred. And large and fruitful Countries are wasted with the Civil Dissensions of the People; then both Land and Seas are filled with unheard of and new invented Miseries, by Land Armies, and Naval Forces: for those Wars of the Greeks and Barbarians, either between themselves or against one another, which are celebrated in Tragedies, have all flowed from one Fountain of Lust, as either that of Riches, of Glory, or of Pleasures. Pliny's Nat. Hist. B. 2. cap 3. But she (the Earth) is the kinder, because all these Productions of her Wealth tend to Mischiefs, Murders and Wars; and so we water her with our Blood; and cover her with our unburied Bones. St. Jerom against Jovinian. Diogenes affirms, That Tyrants and Destroyers of Cities, and Wars both Foreign and Domestic, are not raised for the simple Food of Herbs and Fruits, but for the delicacies of Flesh and Banquets. And St. Chrysostom on 1 Cor. xiii. 3. For if Men had a mutual Love for one another, none would injure another; Slaughters and Fights and Wars and Seditions, and Plunders and Cozenings, and whatsoever Evils, would be far enough off. The same Author speaking of the Rich to the faithful Father says Do not there come by these, Seditions, Wars, Fights the Destruction of Cities, the stealing of Men, Slaveries, Captivities Slaughters, and numberless Evils of Life? And according to Claudian,

had the like Moderation and Forbearance of what was another's: Indeed there would not be such continued Wars in all Countries, in every Age, neither would Sword and Arms sweep away more Men than natural Mortality. Cicero says in his first Book of Moral Ends, From our Lusts arise hatred, variance, discord, seditions and wars. And Maximus Tyrius, Now all Places are filled with War, for our Lusts rove every where, and excite the desire of other Men's Goods in all Countries. And Jamblichus, The Body, and the Lusts of the Body, produce Wars, Fights, and Sedition, for Wars arise for the sake of things useful. But what was said to St. Peter, *All they that take the sword, shall perish with the sword*; not belonging to War in its common Acceptation, but properly to a private Battle, (for Christ himself gives this Reason of his forbidding or neglecting his Defence, because his Kingdom was not of this World) shall be more exactly treated of in its proper Place.

Mat. 26. 52.

Joh. 18. 36.

IX. The Opinion of the Primitive Christians concerning this, Examined.

IX. Whensoever there is any Dispute about the Sense of what is written, the general Practice, and the Authority of the Judicious, uses to be of great Weight; which is also to be observed in Holy Scripture. For it is not probable, that the Churches, which were founded by the Apostles, should suddenly, or all of 'em, fall off from what the Apostles had briefly prescribed to them, and more largely explained by word of Mouth, or had reduced

*These Things observ'd we might with little live;
 Trumpets, and hissing Darts, no Pain would give,
 No Ships the Winds, no Walls the Engine shake.*

And Agathias in his first Book of History, The Minds of Men, voluntarily inclined to Lusts, and Injustice, fill all Places with Wars and Tumults. I will conclude many excellent Sayings with that of Polybius, A Mind content with Necessaries, needs no other Master to teach it Wisdom.

duced into Practice. But they who oppose (*the Lawfulness of*) Wars, use to alledge some Sayings of the Primitive Christians; against which I have three things to say.

First, That from those Sayings nothing else can be gathered, than the private Opinion of some Persons, not the publick (*Doctrine*) of the Churches. Besides, most of them whose Sayings these are, affected to be singular, and to teach something more sublime; such are *Origen* and *Tertullian*, who yet hold not to their own Principles. For the same *Origen* says, that Bees were given as an *Example* by God, *that Men might make a just, and well ordered War, upon a real Necessity*: And the very same *Tertullian*, who in another Place seems to disapprove of Capital Punishments, said (*f*) *No Body denies but it is Good, when Malefactors are punished*; and he is at a stand about Wars, for in his Book of Idolatry, he says, *The Query is whether the faithful may be allowed to make War, and whether War is agreeable to Faith*. And in that Place he seems to encline to that Opinion, which is against War. And in his Book of the *Soldier's Crown*; after he had disputed some things against War, he presently distinguishes between them who were Soldiers before their Baptism, and those who List themselves after Baptism. *Their Condition* (says he) *is plainly otherwise, who were Soldiers before their Conversion to the Faith; for they are as those whom John admitted to Baptism, or as those most faithful*

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Contu-

(*f*) The same *Tertullian of the Soul*, Who would not prefer the Justice of the Age, which the Apostle declares does not bear the Sword in vain; and which is Religious in being severe to Men, And to the *Proconsul Scapula*, We neither terrify thee, nor fear thee; but I wish, that we could preserve all Men, by advising them not to Fight against God. You may both execute the Duty of your Place, and be mindful of Humanity, even because you your selves are also under the Power of the Sword.

Mat. 8. 9.
Act. 10.

Centurions, one of whom Christ approved of, and another St. Peter instructed: (t) provided that having embraced the Faith, and being sealed (by Baptism) they either presently quit their Employment as many have done, or be particularly careful that they do nothing to offend God. He then was sensible that they continued Soldiers after Baptism, which certainly they would not have done, if they had understood War to have been forbidden by Christ; no more than Soothsayers, Magicians, (u) and other Professors of Arts that were forbidden, were allow'd after Baptism to practise their Art. In the same Book, commending a certain Soldier, and him a Christian, he said, *O Soldier, glorious in God!*

The second Observation is, That Christians did often disapprove, or avoid War, for Circumstances of the Times, which would scarce bear War to be practised without some Acts repugnant to the Christian Law. In *Dolabella's* Letters to the *Ephesians*, which are extant in *Josephus*, we find the Jews desire Immunity from all Military Expeditions, because mixt with Strangers they could not well perform the Rites of their own Law; and because they were forced on the Sabbaths to bear Arms, and make long Marches; and the same *Josephus* tells us, that for the same Reasons the Jews got leave of *Lentulus* to be discharged; and in another

(t) The Distinction which he here makes of War, he in another Place applies to Marriage, both in his Book of marrying one Wife, and in his Exhortation to Chastity.

(u) *Tertullian of Idolatry*. They are not admitted into the Church, who practise Arts, which the Doctrine of God does not allow. And *St. Austin* of Faith and Works; Harlots, and Stage Players, and all other Professors whatever of publick Leudnesses, unless they part with, and break off those Bonds, are not permitted to come to the Sacrament of Christ. See an Instance of a Stage-player in *St. Cyprian*. Epist. 65. of Fencing-Masters, Bawds, Buyers of Victims in *Tertullian*; of the Charioteer belonging to the Circus in *St. Austin*.

other Place he relates, when the Jews were commanded to depart from the City of *Rome*, some listed themselves Soldiers, others were punished for refusing to do it in Reverence to the Laws of their Country; namely for the Reasons mentioned before: to which there was sometimes added a third, because they would have had them fought against their own Countrymen, *but to bear Arms against our own Nation is unlawful*; that is, when our Countrymen are in danger for observing the Laws of their own Country. But as often as the Jews could avoid these Inconveniencies, they served in the Wars, even under foreign Kings, but yet continuing to observe the Customs their Fathers, (*) and to live according to 'em: Very like to these Dangers were those, which *Tertullian* objects to the Men of the Sword in his Times; as in his Book of Idolatry, *A Divine and Human Oath, the Badge of Christ, and the Badge of the Devil, are things inconsistent with one another*: Because the Soldiers were obliged to swear by the Gods of the Gentiles, *Jupiter, Mars, and others*. But in his Book of the Crown of a Soldier, he says, *Shall he (a Christian) watch to guard the Temples which he has renounced; and shall he Sup where he is forbid by the Apostle? Shall he defend those (Spirits) by Night, which he has exorcised in the Day?* and then presently, *How many other great Offences may be seen in Military Duties, which must be look'd on as Transgressions.*

The third Observation is this, that some Christians in the Primitive Times were inflamed with so warm a Zeal to undertake some glorious Things, that they often took the *Advices* of our Lord for positive Commands. *Christians* (says *Athenagoras*) *do not Sue at Law those that rob them.* *Salvian* said, it was com-

(*) The words of *Josephus* in the 11th Book of his Ancient History.

commanded by Christ that we should quit those things which occasion a Suit, so that we may be free from Contentions. But (y) this taken thus generally, seems to be design'd rather as good Counsel, tending to a more sublime Life, than an absolute Precept. Thus many of the Primitive Fathers condemn all Oaths, without any exception, where-as St. Paul himself did swear in a serious matter. A Christian in *Tatian* said, *I refuse the Pretorship*. In *Tertullian*, *A Christian is not Ambitious of the Ædile's Office*. Thus *Lactantius* says, that a Just Man (such he would have a Christian to be) should not make War; and also, that he should not go to Sea. How many of the Primitive Fathers dissuade Christians from second Marriages? All which, as they are commendable, excellent, and highly pleasing to God, so they are not required of us by the Necessity of any Law; and these will suffice to answer all usual Objections.

X. Now to confirm our own Arguments, first we want not Writers, and those Ancient ones too, who maintain, that Christians may lawfully inflict Capital Punishments, and, what depends upon them, make War; For *Clemens Alexandrinus* says, that a Christian, if he be called to the Government, should be (as *Moses*) a living Law to the Subjects, Reward the Good, and Punish the Bad. And in another place describing the Habit of a Christian, he says, it would become him to go bare-foot, unless he should happen to be a Soldier. (z) In the Constitutions, Intitl'd, *The Constitutions of Clemens*

(y) The fourth Council of *Carthage* decreed, that a Bishop, tho' provoked, should not Sue for transitory Things. And St. *Ambrose*, Book 2. *Offic. Chap. 21.* and *Gregory the Great*, Book 2. *Ind. 11. Epist. 58.*

(z) In the *Constitutions*, Intitl'd, *The Constitutions of Clemens Romanus*] That Book seems to be written about the end of the second Century.

mens Romanus, Book 7. Chap. 3. we read, *Not that all killing is unlawful, but only that of the innocent; but so, that the Magistrates alone determine what is just.*

But setting aside private Authorities, let us come to the publick one of the Church, which ought to be of the greatest Weight. I say then, that Soldiers were never denied Baptism, or Excommunicated the Church, (*because they were Soldiers*) which yet ought to have been done, and had been so, if Wars had been repugnant to the Conditions of the new Covenant. In the afore-said Constitutions, Book 8. c. 32. the same Writer treats of those who formerly used to be admitted to Baptism, and those who used to be rejected, *Let a Soldier that desires to be baptized, be taught to abstain from Wrongs and Oppressions, to be content with his Wages: If he comply with these, let him be admitted.* Tertullian in his Apology, speaking in the Person of Christians, says, *We Sail and Fight together with you.* He had said a little before, *We are Strangers, and yet we have filled all your Places, Islands, Castles, Towns, Counsels, and your very Camps.* In the same Book he had told (a) *M. Aurelius* the Emperor, that Rain had been procured by the Prayers of his Christian Soldiers. In his Book of a Crown, he says, that the Soldier who had thrown away the Garland, was more brave than the rest of his Fellows; and he shews him, that he had many Christian Fellow-Soldiers.

Chap. 42.

Chap. 37.

We may add, that some Soldiers that suffered Torments and Death for the sake of Christ, received from the Church the same Honour with other Martyrs, among whom are recorded (b) three

(a) See also *Xiphilinus* concerning this Story.

(b) Add a certain Soldier baptized by *Cornelius*, of whom there is mention in *Adones*.

three of St. Paul's Companions; *Cerialis* under *Decius*; *Marinus* under *Valerian*; 50 under *Aurelian*; *Victor*, *Maurus*, and *Valentinus* a Field Officer, under *Maximian*; about the same time *Marcellus* the Centurion, *Severian* under *Licinius*. *Cyprian* concerning *Laurentius*, and *Ignatius*, both *Africans*, says, *They also were once Soldiers in secular Camps, but true and spiritual Soldiers of God, whilst they vanquished the Devil by the Confession of Christ, and obtained the Lord's Victory, and glorious Crowns.* Hence it is plain what the Common Opinion of Christians was about Soldiers, even before the Emperors were Christians.

If the Christians in those Times did not willingly appear at Capital Punishments, it ought not to be thought strange, when for the most part they were executed upon Christians themselves; besides, the *Roman* Laws in other things were more severe, than Christian Lenity could allow of; which sufficiently appears in the single Instance of the (c) *Silanian* Decree of the Senate. But yet after that *Constantine* begun to approve of and promote the Christian Religion, Capital Punishments did not thereupon cease. Nay *Constantine* himself, among many other Laws, made also this of sowing up Parricides in a Sack, which is extant in the Code, Entitled, *Of those who have murdered their own Parents, or Children*; though otherwise he was so very mild in executing Punishments, that he was accused by many Historians (d) of too much

(c) Whose Severity *Adrian* the Emperor mitigated, as it is in *Spartianus*; this may be accounted among the rigorous *Roman* Laws, which forbad the Testimony of a Servant to be taken, unless he were put to the Rack.

(d) He shewed himself merciful to them, who reformed their wicked Life, for he used to say, that a gangred and purrified Member should be cut off, lest the sound should be infected, not that which is either healed, or may be healed. See also *Eusebius*.

much Lenity. But then he had a great many Christians in his Army, (as Histories inform us) and had pourtrayed the Name of Christ on his Royal Standard: From that time also the Military Oath was changed to that Form extant in *Vegetius*, *By God, and Christ, and the Holy Ghost, and the Majesty of the Emperor, which, according to God's Command, is to be loved and revered by Mankind.* Neither at that time among so many Bishops, amongst whom some had suffered very severely for Religion, do we read of one, who, with the dread of the Divine Wrath, dissuaded either *Constantine* from those Capital Punishments, or the Christians from War, when yet there were many very strict Observers of Discipline, and not in the least concealing those things, which related either to the Duty of the Emperors, or other Persons: Such was *St. Ambrose* in the time of *Theodosius*, who in his seventh Sermon speaks thus, *To go to War is no fault, but to do it purely for Plunder is a Sin.* And in his Offices, *Valour, which either defends our Country by War from Barbarians, or protects the weak at home, or our Allies from Robbers, is compleat Justice.* This Argument seems to me of so great weight, that I will seek for no other.

Neither am I ignorant, that (e) sometimes Bishops, and other Christian People, have, by their Entreaties, diverted Punishments, especially Capital ones; and a Custom was introduced, that they who (f) took Sanctuary in the Church, should not

(e) *St. Austin*: It is the Duty of a Priest to intercede for the Guilty. There are many Instances of this Goodness in his Epistles.

(f) See *St. Chrysostom* 16 of Images. The Council of Orleans, Chap. 3. The Law of the *Wifigoths*, Book 6. Tit. 5. Ib. 9. Tit. 2. Chap. 3.

not be delivered up, but upon *promise* to save their Lives; and that (g) about *Easter*, those who were committed to Prison for ordinary Crimes, should be released. But he that carefully considers these, and the like Customs, will find them to be Marks of Christian Charity, that embraces all Opportunities of Mercy, not of a Mind designing to condemn all Capital Punishments; whence the Privileges of those Places and Times, and even the Intercessions themselves, were (h) moderated with certain Exceptions.

Here some object against us the 12th Canon of the Council of *Nice*, which runs thus: (i) *Whoever being called by Grace, have at first shewed their Zeal, and Faith, and quitted their military Employment; and have afterwards returned like Dogs to their Vomit; so that some shall offer Mony; and through favour be taken again into the Service: They shall lye (among the Penitentials) for ten Years, after three Years bearing (the word). But in all these the Purport and Manner of their Repentance is to be observed. For whoever declare their Conversion by Fear, by Tears, by Patience, and by good Works, without dissimulation, these fulfilling the appointed Time of bearing, shall at length communicate in Prayers, and afterwards it shall be lawful for the Bishop to think somewhat more favourably of them. But whosoever shall bear it indifferently, and shall think the Form of their entring into the Church to be sufficient for their Conversion, these shall fulfil the whole appointed*

(g) *L. Nemo. C. de Episc. audientia.*

(h) Which see in *Cassiodorus*, 11, 40. &c. among other things of the Ecclesiastical Immunity in the Decree.

(i) *Simon the Master* in the Epitome of that Canon, οἱ βλαζόμενοι καὶ δοξάζοντες ἀπισήναι, &c. They who having Force us'd towards 'em have seem'd to make Resistance, but yet afterwards overcome with Impiety, have lifted themselves again. let 'em be Excommunicated for ten Years. *Balsamo, Zonaras, and Ruffinus*, B. 10. c. 6. exprefs the same Sense of this Canon.

pointed Time. Even the very time of thirteen Years sufficiently declares, that they here treat not of a small or doubtful Crime, but of some grand and apparent Sin. (k) But Idolatry was undoubtedly meant here; for the mention which was made before of the times of *Licinius*, in the 11th Canon, ought to be supposed tacitly repeated here, as the Sense of the following Canon often depends on the former; see for an Instance the 11th Canon of the *Eliberin Council*. But *Licinius* (they are the words of *Eusebius*) turned out all Soldiers from their Employment, (l) if they would not Sacrifice to their Gods; which *Julian* afterwards imitated; for which reason we read *Vetricius* and others quitted their Posts for the sake of Christ. And formerly 1104 Soldiers had done so in *Armenia*, under *Dioclesian*, of whom there is mention made in the *Martyrologies*: And *Menna* and *Hesychius*, in *Egypt*. So also in the times of *Licinius*, many left their Commands, of whom was *Arfaceus*, mention'd among the Confessors, and *Auxentius*, afterwards made Bishop of *Mopsuestia*. Wherefore they, who being prick'd in Conscience, had quitted their Posts, could not be admitted again under *Licinius*, but by the Abjuration of the Christian Faith: Which Fault was by so much the greater in these, by how much their former Act had shewn 'em to have a superior

Know.

(k) Which is called by *Tertullian* (of Idolatry) a principal Crime, the greatest Guilt of the Age; a most grievous and hainous Crime, by *Cyprian*, Epist. 12.

(l) *Sulpitius Severus*, Then indeed *Licinius*, because he fought against *Constantine* for the Empire, commanded his Soldiers to Sacrifice, and cashiered those that refused; for this cause *Valentinian*, who was afterwards made Emperor, quitted his Command under *Julian*. Not unlike to this, is what *Victor Oricensis* relates, that many under King *Huneric* quitted their temporal War, because it was joined to *Atridism*.

Knowledge of the Divine Laws to the others; therefore these Apostates were punished more grievously than those mentioned in the former Canon, who renounced Christianity, without any Danger of losing Life or Goods, *but purely out of Ignorance.*

But to interpret this Canon generally of all manner of War, is absolutely against all Reason. For the History plainly testifies, that they who had quitted their Posts under *Licinius*, and had not, during his Reign, returned to them again, because they would not violate their Christian Faith, were left to their choice by *Constantine*, whether they would continue still discharged, or return to a military Life, which doubtless many did.

There are also some who object the Epistle of *Leo*, which says, *That it is against the Ecclesiastical Canons, after the Act of Repentance, to return to a secular War.* But we must know, that in Penitents, no less than in Priests, and Monks, there was required a very strict Life, not every way Christian, (*that is immediately necessary for all Christians*) but a certain singular Purity, (m) that they might be as great Examples of Contrition, as they had been of sinning. Likewise in the most ancient Customs of the Church, which, that they might be the more revered for their venerable Name, are generally called the Apostolical Canons; Canon the 82d it is decreed, *That no Bishop, Priest, or Deacon, should follow the War, and retain both the Civil Office, and the Sacerdotal Functi-*

on:

(m) *Leo* in his Epistle 90 to *Rufinus*. He that begs Pardon for things unlawful, should abstain from many things that are lawful. We read in the Epistle of the Bishops to King *Lewis*, Every Man ought so far to deny himself things that are lawful, as he remembers that he has committed things unlawful. In the Statutes of *Calvus*. So much the more should every one seek the Benefit of good Works, the greater the Losses are that he has suffer'd by bad ones.

on. For those things that are Cæsar's, should be given to Cæsar, and those that are God's, should be given to God. By which it appears, that those Christians who could not pretend to the Honour of Holy Orders, were not denied to follow Arms.

Moreover, (n) they who after Baptism, had served any Office, Civil or Military, could not be ordained Clergy-men, as you may see in the Epistles of *Syriscus*, *Innocentius*, and the Council of *Toledo*. For Clergy-men were not chosen out of Christians of any sort, but of them who had given Proof of a most strict Life. Besides, the Obligation of War, and of some Offices, is not perpetual. But they that are engaged in the Holy Ministry, ought not to be diverted from it (o) by any other care or daily Labour; for which the first Canon provided, that no Bishop, Priest, or Deacon, should have any Secular Employment; and the 8oth, that he should not meddle in publick Offices: And the sixth of the *African* Canons (p) that he should not take the Charge of other Mens Affairs, or the Defence of their Causes. So *St. Cyprian* (q) holds it unlawful for 'em to be appointed Tutors, or Guardians.

But we have the express Judgment of the Church for our Opinion, in the first Council of *Arles*, which was held under *Constantine*; for the third Canon of that Council has it thus, Concerning those who throw away their Arms in time of

VOL. I. I Peace,

(n) *Eusebius*, in his first B. of Demonstrations, describes the two-fold Life of a Christian, the one perfect, the other inferior to it; that those who are in this dictate to those that War justly, what they should do.

(o) See the Canon of the Council of *Mentz* in *Gratian*, intitled *Ne Clerici vel Monachi*.

(p) See the Epistle of *St. Jerome* to *Nepotianus*.

(q) In the Epistle to the Priests, Deacons, and People, &c.

Peace, it has pleased us to exclude them from the Communion; that is, they who quit their Military Employment, when there was no Persecution. For the Christians (r) by the word *Peace* meant so, (that is, a freedom from Persecution) as appears from *Cyprian* and others. Let us add the Example of the Soldiers under *Julian*, Christians of no small Proficiency, as being ready by their Death to give a Testimony to Christ, of whom *St. Ambrose* speaks thus, *The Emperor Julian*, tho' an Apostate, yet had under him Christian Soldiers, to whom when he said, *March (against the Enemy) in defence of the State, they obey'd him; but when he said to them, March against the Christians, then they acknowledged the Emperor of Heaven*. Such was the *Theban Legion* long before, which in the Reign of *Dioclesian* the Emperor were converted to Christianity by *Zabdas* the 30th Bishop of *Jerusalem*, and from that time left a memorable Example of Christian Constancy and Patience to all Ages, which I shall speak of hereafter.

Let it suffice in this place to mention that Speech of theirs, which expresses the Duty of a Christian Soldier with solid Brevity. *We offer against any Enemy whatever our Hands, yet hold it a*

(r) *Tertullian* of Idolatry. Nay, how shall he also fight in time of Peace? And the same Author of the shunning of Persecutions: What greater War can there be to our Peace, than Persecution? And *Cyprian*, *Epist.* 10. When our Mother the Church has first obtained Peace by the Mercy of God. *Epist.* 22. When the Lord shall begin to give Peace to the Church it self. *Epist.* 31. The Peace of the Church is to be hoped for. *De Lapsis*, of those that had slipt. Long Peace had corrupted the Discipline. *Sulpicius Severus*, When *Antoninus Pius* was Emperor, the Churches enjoyed Peace. Again: For the next thirty eight Years the Christians had Peace; and in the time of *Constantine*, from that time we enjoy Peace, our Affairs being at quiet; and in the beginning of the History, The Persecutions of the Christian People, and afterwards times of Peace.

barbarous Crime to embrew 'em in the Blood of Innocents: Our very right Hands know how to fight against the wicked, and our Enemies, but they know not how to butcher the Righteous, and our Country-men. We remember that we first took up Arms for our Fellow-citizens; rather than against them. We have always fought for Justice, for Piety, for the Safety of Innocents; these have been hitherto the Prizes of our Dangers. We have fought for the Faith, which how can we keep to you, (the Speech is to the Emperor) if we do not keep it with our God? And St. Basil speaks thus of the Primitive Christians. *Our Ancestors* never accounted Slaughters committed in War, as Murders, excusing them who fought for Chastity and Piety.

CHAP. III.

The Division of War into Publick and Private.

An Explication of the Supreme Power.

I. **T**HE first and most necessary Division of War is this, that one War is private, another publick, and another mix'd; that is a publick War, which is made by him who has the Authority; private, which is otherwise; mix'd, which is in one part publick, in the other private. But let us first speak of private War, which is the most Ancient.

That some sort of private War may be lawfully waged, as far as respects the Law of Nature, I think has been fully proved by what I have said above, where it was shewed, that it is not repug-

I. The Division of War into publick and private.

nant to the Law of Nature, for any one to repel Injuries by Force. But perhaps some will think, that it is not lawful, at least since the constituting of publick Courts of Justice; for tho' Courts of Justice are not from Nature, but Human Appointment; yet since it is much honest, and more conducive to the Peace of Mankind, that Differences should be examined by Persons unconcerned, rather than by particular Men, who too often byass'd by self-love, do only that which they themselves think right; Equity it self, and natural Reason, advise us to submit to so laudable a Custom. Paulus the Lawyer says, *That is not to be allowed to particular Persons, which may be done publicly by a Magistrate; lest it be the occasion of making a greater Tumult.* Hence it is, says (a) King Theodorick, that a Sacred Reverence attends the Laws, that nothing should be done by ones own Hand, nothing of his own Motion; for wherein does a quiet Peace differ from the Confusions of War, if Differences are determined by Force? And Laws call that Force, whensoever a Man takes that which he thinks is his due, without a Judge.

II. That all private War, by the Law of Nature, was not unlawful, after the erecting of Tribunals of Justice, defended with some Examples.

II. Undoubtedly the Liberty allowed before, is now much restrain'd since the erecting of Tribunals: Yet there is a time, when it now also is of Force, that is, where legal Judgment cannot be executed; for the Law, when it forbids a Man to take his own without Judgment, naturally implies it to be in a Place where Justice is administered. Now Judgment ceases either for a little time, or continually; (b) it ceases for a little time, when

(a) See the same in the *Edict*, Chap. 10, and 144.

(b) Servius upon the 11th *Æneid*, *Inferre manum Parca*. The Fates seiz'd on him, or snatch'd him away, *traxerunt debitum sibi*, they seized on their due. A Term borrowed from the Law;

when the Judge cannot be waited for without certain Danger and Damage: And continually, by Right, or in Fact: By Right, if a Man be in Places not inhabited, on the Seas, in a Wilderness, in desert Islands; and if there be any other Places, where there is no Society: In Fact, if Subjects do not regard the Judge, or the Judge refuse to take publick Cognizance of the Fact.

What we said before, that since publick Tribunals were erected, every private War is not repugnant to the Law of Nature, may be gathered from the Law given to the Jews, where God thus speaks by Moses. *If a thief be found breaking up (i. e. by Night) and be smitten, that he dies, there shall no blood be shed for him; but if the sun be risen upon him, there shall be blood shed for him.* For this Law, so accurately distinguishing, seems not only to bring in an Impunity, but also to explain the Law of Nature; that it is not founded on any particular divine Command, but on common Equity; whence we see other Nations follow it. That of the 12 Tables is well known, which was undoubtedly taken from the old Attick Law. *If a thief commit a robbery in the night, and if a man kill him, he is killed lawfully.* So is he reputed innocent by the Laws of all known Nations, who by Arms defends himself against him that assaults his Life; which so manifest a Consent is a plain Testimony, that there is nothing in it contrary to the Law of Nature.

I 3 III. Tho

Law; for it is called *infectio manus*, the clapping ones hand upon a thing, when without the Authority of a Judge, we seize on what is due to us.

(c) They are Solon's Words. If any Man steal in the Day-time above the value of 50 Drachmes (a Roman Penny, two Groats) he ought to be brought before the Magistrate; but if he steal the least thing in the Night, it shall be lawful to kill him. Besides what will be mentioned hereafter in the 11d Book, Chap.

III. Nor by
the Evange-
lical Law,
with an An-
swer to the
Objections.

Mat. 5. 39.

Rom. 12.

15. 2. 2. 2.

Mat. 25. 52

Rom. 5. 8.

10.

III. There is more difficulty concerning the perfecter Divine voluntary Law, that is, the Evangelical. I doubt not but God, who has more Right over our Lives, than we our selves, might have required Patience of us to such a Degree, that being brought privately into Danger, we ought rather to be killed, than to kill. But our Question is, whether he will tie us up so far. Two Places (of Scripture) are wont to be brought for the Affirmative Opinion, which we quoted before the General Question. *But I say unto you, resist not him that doth Thee an Injury. Dearly beloved, avenge not your selves;* the Latin Version has it, *Defend not your selves.* There is also a third Place in those words of Christ to St. Peter, *Put up thy sword into the sheath, for they that take the sword, shall perish by the sword.* Some also add the Example of Christ himself, who dyed for his Enemies.

Nor are those wanting among the Primitive Christians, who indeed did not disallow of public Wars, but believed private Defence to be forbidden. I have already brought some Places out of St. Ambrose for War: But they are by much more numerous and clear, and better known, in St. Austine. Yet the same St. Ambrose said, *Perhaps Christ therefore said to Peter, upon his shewing him two swords, It is enough;* as if it had been lawful to (the time of) the Gospel? that the Doctrine of Equity might be in the Law, and that of Truth in the Gospel. And in another Place, *A Christian, tho' he light on an armed Robber, is not to strike him again, lest in defending himself he offend against Piety.* And St. Austine, *I do not dislike that Law, which allows those (Robbers, and other violent Aggressors) to be killed, but how I shall defend them, who kill 'em, I know not.* And again, *I do not approve of the advice, that some Men should be put to Death, lest others should be killed.*

killed by them, unless he happen to be a Soldier, or publick Officer, so that he does not do it for himself, but for others, by Virtue of a lawful Authority. And it (d) plainly appears, that St. Basil was of the same Opinion, from his second Epistle to *Amphilochius*.

But the contrary Opinion, as it is more received, so it seems to me more true, that we are not obliged to such a Patience; for we are commanded in the Gospel to love our Neighbours as our selves, not before our selves; nay, when an equal Danger threatens us, we are not forbid (e) to take care of our selves before others; as we have already shewn from the Authority of St. Paul, explaining the Rule of Beneficence. Perhaps some one may object, and say, tho' I may prefer my own Good before that of my Neighbour, yet this holds not in things unequal; wherefore I ought rather to part with my own Life, than suffer the Aggressor to fall into Eternal Damnation. But it may be answered, that the Person assaulted may also stand in need of time to repent, or may reasonably think so; and that the Assaulter may likewise before his Death have some time left him to repent. Besides in Moral Judgment, that Danger seems not to be much esteemed, into which a Man throws himself, and from which he may deliver himself.

'Tis certain some of the Apostles seem to have travel'd even to the last, Christ seeing and knowing it, armed with Swords; which *Josephus* informs us, other *Galileans* also did in their Journey

(d) Add the Canon of the Council of Orleans, quoted by Gratian, ch. last. caus. 13. qu. ii.

(e) *Cassiodorus* of Friendship; No one indeed is obliged by any Precept, or any Reason, to secure his Neighbour's Soul, at the loss of his own, or to rescue his Body, (setting aside the hopes of eternal Salvation) at the Ruin of his own.

from their own Country to Jerusalem, (the Roads being much infested with Highwaymen) and who also tells us the same of the *Essenes*, the most innocent of Men. Hence it came to pass, when Christ told his Disciples, that such a time was at Hand, that they should sell even their Garments to buy Swords; the Apostles presently answered, that there were two Swords in their Company, and in that Company there were none but the Apostles. Besides, what Christ himself then said, tho' indeed it was not a Precept, but a proverbial Speech, declares, that most grievous Dangers were at Hand; (as the Opposition of the first time, which was safe and prosperous, plainly shews, *ver.* 35.) yet it is such a one, as seems to be taken from that which us'd to be done, and which the Apostles esteemed lawful.

But it is rightly said by *Cicero*, *It were certainly unlawful to have Swords, if it were by no means lawful to use them.* But the other, *resist not him that injures you*, is not more universal than that which follows, *Give to every one that asketh*; which yet admits of an Exception, lest we our selves should be too much oppress'd. Nay there is nothing added to that Precept concerning giving, which has a restraining Force; but it is restrain'd only by the Common Sense of Equity, when the Precept of Nonresistance has its Explication adjoined, by the Instance of a Box on the Ear; that it may be understood, that it does then particularly oblige us, when the Injury offer'd us is as slight as a Box on the Ear, or something like it; for otherwise it would have been better to have said, *Resist not him that injures thee, but rather yield up your Life than use Arms.*

In the words to the Romans, *avenge not your selves*, the word *avenge* does not signify to defend, but to revenge; as *Judith* i. 2. ii. 1. *Luke* xviii. 7, 8.

7, 8. xxi. 22. 2 *Thes.* i. 8. 1 *Pet.* iii. 14. *Rom.* xiii. 4. 1 *Thes.* iv. 6. And this the very Connexion of the words plainly shews, for the words going before are *render to no man evil for evil*; but this is the Description of Revenge, not of Defence; St. Paul also supports his Advice from that place of *Deuteronomy*, *Vengeance is mine, I will repay it*: Where 'tis in the *Hebrew*, לִי נִקָּם in which, as well the Propriety of Speech, as the very Sense of the Place, implies a Revenge, which cannot possibly be understood of a Defence.

Now what was said to St. Peter, does indeed contain a Prohibition to use the Sword; but not in the Cause of Defence; for he had no need to defend himself; for Christ had already spoke for his Disciples, *Suffer these to go away; and This, that the saying might be fulfilled which he spake, of those thou hast given me I have lost none*. Nor had Christ need, for he would not be defended. Therefore he gives this Reason in St. *John* for forbidding it, *The Cup which my father hath given me, shall I not drink it*; and he says in St. *Matthew*, *How then should the Scriptures be fulfilled, that thus it must be?* St. Peter was then carried away with a desire of Revenge, (as being warm) not of defending. Besides, he took up Arms against them who came with publick Authority, which whether it be lawful in any Case to resist, is a particular Question, to be hereafter particularly handled by us; but what Christ also adds, *All they that take the sword, shall perish by the sword*; is either a proverbial Speech, taken from the use of the common People, which signifies, that Blood requires Blood, and therefore that the use of Arms is never free from Danger; or according to the Opinion of *Origen*, *Theophylact*, *Titus* and *Euthymius*, it shews, that we should not too hastily take the Revenge out of God's Hand, which He, in his

Joh. 18. 8.

9.

Ver. 11.

Rom. 13.

1 Joh. 3. 10.

own due time it will fully requite. In which
 Rev. 13. 10. Sense it is expressly said, *He that killeth with the sword, shall be killed by the sword; here is the patience, and faith of the saints; with which agrees that of Tertullian, God is so fit a Trustee of thy Patience, that if thou layest thy Injuries in his Hand, he is thy Avenger; if thy Grief, he is thy Physician; if thy Death, he is thy Reviver; what a Privilege has Patience, that it has God for its Debtor?* Moreover in these words of Christ, there seems to be included a Prophecy, of those Punishments which the Sword of the Romans would take of the Blood-thirsty Jews.

As to the Example of Christ, who is said to have died for his Enemies, it may be answered; that all Christ's Actions were indeed full of Virtue, and which we may laudably imitate, as far as 'tis possible, without a Reward; but yet they were not all such, as either should be drawn from some Law, or constitute a Law to us. For that Christ died for his Enemies, and the ungodly, he did it not by any Law, but as it were by a special Covenant, and Agreement with the Father, who upon his doing it, did not only promise him the most exalted Glory, but also a People that should endure for ever. Otherwise this Fact of Christ was (as it were) singular, and to which nothing
 Isa. 53. 10. was ever found parallel, as St. Paul shews; and
 Rom. 5. 7. Christ himself Commands us to expose our Life to Danger, not for every one, but for our Brethren of the same Fellowship.

But of Sentences, that are brought out of the Christian Writers, some seem rather by way of Counsel, and to contain a Commendation of a sublime Resolution, than a strict Precept; others are their own private Opinions, not the Sentiments of the whole Church. For in those most ancient Canons called Apostolical, he was to
 have

have been excommunicated who killed his Enemy in a Quarrel for the first Blow (f) because of his too much Heat; and St. *Austine* himself, whom we quoted before on the other side, seems yet to approve of this Opinion, *Quest.* 84th upon *Exodus*.

IV. Of publick War, part is Solemn by the Law of Nations, and part is less Solemn; what I here Term Solemn, is generally called Just, in the same Sense as a *Will* is term'd *Just*, in Opposition to a *Codicil*, or a *Marriage Just*, in Opposition to the *Cohabitation* of *Slaves*; not because it is not lawful for a Man, if he pleases, to make a *Codicil*, and for a Slave to *Cohabit* (ff) with his Wife: But because a *Will*, and a solemn Marriage, have some peculiar Effects, by the Civil Law; which it is convenient to observe; for many, misunderstanding the word *Just*, think all Wars are condemned as unjust and unlawful, which are not called Solemn. Two Things then are requisite, to make a War Solemn by the Law of Nations: First, that it be made by the Authority of those that have the Sovereign Power in the State: And then, that some Formalities be used, of which we shall treat in its proper place. But because these are jointly required, therefore the one is not enough without the other.

But

(f) *St. Ambrose*, Book 10th, on *St. Luke*. O Lord why dost thou bid me buy a Sword, who forbiddest me to sinne? Why dost thou command me to have that, which thou forbiddest me to draw? unless perhaps, that my Defence may be ready, not Revenge necessary.

(ff) Even among the Free Men there were some Marriages not just, and Children not lawful. *Paul. Sent. Lib. 12. Tit. 19. L. Si Uxor. D. ad L. Julian. Concerning Adulteries.* So also some Liberty not just. *Seneca of a Happy Life, Chap. 24. Suetonius Officiis, chap. 11.*

IV. Publick War divid-
ed into that
which is So-
lemn, and
that which
is less So-
lemn.

But a publick War less Solemn, may be also without those Formalities, and be made against private Men, and have for its Authority any Magistrate. And indeed if we consider the thing without respect to the Civil Law, every Magistrate seems to have a Power of making War, as in defence of the People entrusted to him, so also to exercise that Jurisdiction, if Violence be offered. But since by War the whole City (or State) is endangered, therefore it is provided, by the Laws of almost all Nations, that War be not made, but by the Authority of him who has the Sovereign Power in the State. There is such a Law in *Plato's* last Book *de Legibus*. And by the *Roman* Laws he was reckoned guilty of High Treason, who without Commission from the Prince presumed to make War, muster Soldiers, or raise an Army. And the *Cornelian* Law, enacted by *L. Cornelius Sylla*, says, without Commission from the People. In the Code of *Justinian*, there is a Constitution extant, made by *Valentinian* and *Valians*, thus, *Let no Man dare to raise an Army without our Knowledge and Advice*. To this we may refer that of (g) *St. Austin*, *Natural Order, accommodated to the Peace of Mankind, requires this, that the Authority and Council of raising War, should be in the power of Princes*.

But as all Sayings, tho' never so general, have Equity for their Interpreter, so also has this Law. First then, it cannot be doubted, but that it is lawful for him who has the chief Authority, to restrain, by his Officers, a few who are disobedient, provided it requires not great Forces to do it, nor

(g) *Lib. 22. Chap. 74. Against Faustus*, quoted by *Gratian*, c. *quid culpatus*. *caus. 23. quest. 1.* Among the *Hebrews* every War not undertaken by the special Command of God is called מלחמת *bellum potestatum*, the War of the Powers.

endangers the State. Again, if the Danger be so pressing, that Time will not allow to consult the Supreme Magistrate, here also Necessity grants an Exception. *L. Pinarius*, Governor of *Enna*, a *Sicilian* Garrison, presuming on this Right, upon certain Information that the Town's men designed to Revolt to the *Carthaginians*, by putting them to Death, preserved the Place. *Franciscus de Victoria* has pretended to transfer the Right of making War to the Citizens, even beyond such a Necessity, to revenge those Injuries, which the King neglects to adjust; but his Opinion is justly rejected by others.

V. But Lawyers do not agree, by what Events it appears, that the Power of making War is in Inferior Magistrates, or whether such a War may be called publick; some affirm it, some deny it. Indeed, if by publick we mean only that which is done by the Right of a Magistrate, no doubt but such Wars are publick; and therefore they that in such a case resist the Magistrate, are liable to the Punishments due to those that are rebellious against the Powers set over them. But if Publick be taken in a higher Sense, for that which is Solemn, as without dispute it is often taken; they are not publick Wars; because as well the Judgment of the Sovereign Power, as also other things are required, to make that Right compleat. Neither does it influence me, that in such a War (*b*) the Goods of those that make Resistance are taken as Prize, and given to the Soldiers. For that is not so peculiar to a solemn War, as that it may not also be done in any other.

V. Whether a War made by the Authority of a Magistrate that has not Supreme Power, be Publick, and when?

(*b*) To the Lawyers cited on this Affair, we may add *Franc. Aret. conf. 14. N. 7. Gall. 4. Of Publick Peace. Chap. 11. Numb. 20. Cardinal Tuschus, pract. quest. 55. Letter B. verbo Bellum. Num. 10. Geddous. Conf. Marp. 28. No. 202, &c.*

But it may happen, that in a very large Empire, the inferior Powers, may have Authority granted them to begin a War; which if so, then the War may be reputed as made by the Authority of the Sovereign Power. For what Right a Man gives another to do a thing, he himself is esteemed the Author of it.

But the greater Dispute is, whether if such a Power be not given, the Conjecture of the Will be sufficient. I do not see how that can be allowed; for it is not enough to foresee what the Will of the Sovereign would be, if he were consulted in this case; but this is more to be considered, what a Prince would have done without being advised with, where the matter will allow time, and admit a serious Deliberation, if a Law were thereupon to be made: For tho' the Reason which moves a Sovereign's Will, being narrowly look'd into, may cease in some particular case, yet the Reason generally taken, ceases not; which is, to prevent Dangers in time, which cannot be done, if every Magistrate should assume to himself the Judgment of that Right.

Cm. Manlius was not therefore injuriously accus'd by his Lieutenants, because he had made War upon the *Galatians* without the Order of the People of *Rome*; for tho' there were some Legions of the *Gallate* in the Army of *Antiochus*; yet having made Peace with *Antiochus*, whether that Injury was to be revenged on those *Galatians*, should have been decided by the Judgment of the People of *Rome*, not of *Cm. Manlius*: *Cato* would have had *C. Caesar* delivered up to the *Germans*, for making War on them; I believe not so much in respect

(1) See the Law of *Frederick* the Emperor, in *Conrad* Abbot of *Ussing*.

respect to Justice, as to free the City from the fear of a threatening Lord: For the Germans had assisted the Gauls, then Enemies to the People of Rome, and therefore could have no Reason to complain of any Wrong done them, if the Romans had just Cause to make War against the Gauls. But *Cæsar* ought to have been contented with beating the Germans out of France, the Province appointed to him, and not to have push'd the War on the Germans in their own Country, especially, when there was no Danger to be feared from thence, without first consulting the People of Rome. The Germans therefore had no Right to demand *Cæsar*, but the People of Rome had to punish him, as the Carthaginians plainly answered the Romans. *In my Opinion, the Question is not to be put, whether Saguntum has been besieged by (Hannibal's) private Council, or by the publick Authority; but whether the Action be laudful or unlawful; for it belongs to us to call our own Commander in Question, whether he has done it by our Order, or of his own head. But the only Question, with Respect to you is, whether it was allowable by the League (between us.)* Ling. B. 21.

Cicero defends what *Octavius* and *Decimus Brutus* did, who made War upon *Antony* of their own Heads. But tho' it was plain, that *Antony* had deserved it, they should have staid for the Opinion of the Senate, and Roman People, whether it were for the Benefit of the State to have dissembled the Matter, or to have revenged it, to have come to Terms of Peace, or to have recourse to Arms. For no Body is obliged to pursue his own Right, which is often attended with the hazard of a Injury.

But then further, when *Antony* was declared an Enemy, the Senate and People of Rome should have been allowed to consider, whom to employ
in

in that War: Thus the *Rhodians* answered *Cassius*, when he desired their Assistance according to the League, that they would give it, if the Senate ordered it. Admonish'd by this Example (and we may recollect many more) we should remember not to approve of every thing that is Recorded by Historians, tho' of great Fame; for sometimes they serve the Times, and sometimes speak out of Affection; *fitting, τὸν χρόνον ὑποκρίνεται, the Line to the Stone, (or the story to their Occasion.)* Wherefore we must endeavour in such Affairs to use a sincere Judgment, and not rashly draw those Things into Example, which can no more be excused than commended, in which respect we often fatally Err.

But where it is said, that a publick War ought not to be made, but by the Authority of him who has the Supreme Power; for the understanding both of this Affair, and of that Question concerning a Solemn War, and so of several others, it will be necessary to be thoroughly informed, what this Supreme Power is, and who enjoy it; and so much the more, because Learned Men in our Age, each of them handling this Argument rather according to the Custom of present things, than real Truth, have made that which was of it self not very easie, much more difficult.

VI. In what things the Civil Power consists.

VI. The Moral Power then of governing a State, which uses to be called the Civil Power, *Thucydides* describes by three things; where he calls a City that is really so, *Ἀσπολις, αὐτοκρατορία, αὐτονομία*. Using its own Laws, Judgments, and (k) Magistrates. *Aristotle* divides the Administration of the

(k) It might also have been rendered *Vestigalibus, Taxes*, as the Commentator of *Thucydides* has it, for it is a word of a double Signification.

the Government into three Parts. 1. Consultation about Things Common. 2. The Care of choosing Magistrates. 3. Judgments. To the first he refers Deliberation about War, Peace, making Leagues, or breaking them, and enacting Laws; then he adds about Death, Banishment, Confiscation of Goods, and Bribery or Extortion; that is, as I take it, publick Judgments, when before he had by the Name of Judgments understood private. *Dionysius Halicarnassensis*, chiefly takes notice of these three things: 1st, The Right to chuse Magistrates. 2^{dly}, The Right (1) to make Laws, and Repeal them. 3^{dly}, The Right of making Peace or War. In another Place he adds, Judicial Proceedings as a Fourth; and again elsewhere, the Care of Religious Affairs, and of calling Assemblies.

Lib. 4.
Lib. 7.
Lib. 11.

But if any one would divide it right, he may easily find all things relating to it; so as that nothing may be wanting or abound. For he that governs a State, does it partly by himself, and partly by others. What he does himself respects either Universals or Particulars; what concerns Universals, relates to the making or repealing of Laws; which extends as well to sacred Things (as far as they concern the Civil State) as to profane. *Aristotle* calls this Art *Ἀρχιτέκτων*, the Science of Building (a City). The Particulars about which it is employed, are either directly publick, or really private, but so as they are directed to the publick. Those directly publick, are either Actions, as of Peace, War, making Leagues; or things, as Taxes, and such like, in which is comprehended that Eminent Dominion; which a State has over its Subjects, and their Goods, for the publick Use. *Aristotle* calls this Art by the general Name *πολιτική*.

VOL. I.

K

ΤΙΧΗ,

(1) *Servius* upon the 1st of the *Eneids*. *Omni Ditione* All Power, more rightly *Omni* than *Omnia*; to signify *With all Power*, in Peace, Laws, War.

τιμή, that is, Civil, and βουλευτική, Counselling or Consulting. Private Things, are those disputed between particular Persons, to decide which by public Authority contributes to the publick Peace. And this Art *Aristotle* calls Judicial, δικάσιμη. Those Things which are dispatch'd by another, are either done by Magistrates, or other Commissioners, among whom we may put Embassadors. In these then consists the Civil Power.

VII. What
Power is
Supreme.

VII. That is called Supreme, whose Acts are not subject to another's Power, so that they cannot be made void by any other human Authority. When I say, by any other, I exclude him that has the Supreme Power, who may change his own Will (*m*), as also his Successor, who enjoys the same Right, and consequently has the same Power, and no other. Let us then see what this Sovereign Power may have for its Subject. The Subject then is either Common or Proper: As the Body is the common Subject of Sight, the Eye the proper; so the common Subject of Supreme Power is the City (or State) which I have above call'd a perfect Society of Men.

We then exclude the Nations, who have submitted to the Power of another People, as were the *Roman* Provinces; for those Nations are no longer a State (or City) as we now use the Word, but the less worthy Members of a great City, as Servants are the Members of a Family. Again it happens, that divers People have one and the same Head, and yet each of those People make a compleat Society; for it is not in the Moral Body, as 'tis in the Natural, where one Head cannot belong to several Bodies; for there the same Person may be Head, under a different Consideration, to several distinct Bodies; of which
this

this is a certain sign, that upon the Extinction of the Royal Family, the Power separately reverts to all the People. So it may also happen, that several Cities may be linked together in a most strict Alliance, and make a Systeme, or (as *Strabo* more than once calls it) one Body; and yet neither of 'em cease to retain the State of a compleat City; which is observed as by others, so also by *Aristotle* in several Places.

Let the common Subject then of Supreme Power be a City, and understood in that Sense I have already given it. The proper Subject is one or more, according to the Laws and Manners of every Nation, ἡ πρώτη ἀρχή, the first beginning, in *Galen*, lib. 6. de placitis, *Hyppoc.* & *Plat.*

VIII. And here we must first reject their Opinion, who will have the Supreme Power every where, and without Exception, in the People; so that they may restrain or punish their Kings, as often as they abuse their Power. What Mischiefs this Opinion has, and may yet occasion, being once receiv'd by the Vulgar, every wise Man foresees. I shall refute it with these Arguments. It is lawful for any Man to engage himself as a Servant to whom he pleases, as appears both by the *Hebrew* and *Roman* Laws. Why should it not therefore be as lawful for a People that are at their own disposal, to deliver up themselves to any one or more Persons, and transfer the Right of governing them upon him, or them, retaining to themselves no part of that Right? Neither should you say this is not to be presumed: For the Question here is not, what may be presumed in a Doubt, (n) but what may be lawfully done: In vain do they alledge the Inconveniencies which arise from hence, or may arise; for you can frame no Form

VIII. The Opinion refuted which holds that the Supreme Power is always in the People. and the Arguments answered.

K 2 of

(n) *Gail. de Arrestis*, Chap. 6. Num. 22.

of Governments in your Mind, which will be without Inconveniences and Dangers. *Either you must take the one with the other, or refuse both*; says (o) the Comedian.

But as there are several ways of living, some better than others, and every one may chuse which he pleases of all those sorts; so a People may chuse what Form of Government they please: Neither is the Right to be measured by the Excellence of this or that Form, of which divers Men have divers Opinions, (p) but from their own Will.

There may be many Causes why a People should renounce all Right of governing themselves, and yield it to another: As when their Lives are in danger, and they can find no other means whereby to save them; or being in great want, they cannot otherwise be supported. For if the *Campani* formerly, obliged by Necessity, submitted themselves to the (q) *Romans* in this form, *We yield up, O ye Senators, the People of Campania, and the City of Capua, our Fields, Temples, and all that we have, both divine and human, into your Power; and some People, when they offered themselves (r) to the Power of the Romans, were refused, as Appian relates.* What hinders, but that any People

(o) *Cicero* B. 3 of *Laws*. It is an unjust way of Accusation in any case to take notice only of the Evils and Inconveniencies, and to omit the Advantages. And again, But we should not have that good that is therein, without partaking also of the bad.

(p) The City *Augsburg* at the same time requested of *Charles V.* Emperor, that the Decrees of the Senate of their City might be of no force, unless the Masters of the Courts also assented, and *Norimberg* petitioned the quite contrary.

(q) As the *Falisci* in *Livy*, B. 5. the *Samnites*, B. 8. so the *Epidamnii* being deserted by the *Coreyreans*, gave themselves up to the *Corinthians*, to be defended against the *Taulantians*, and the *Exiles* *Thucyd.* B. 1.

(r) And of the *Venetians*, *Bembo* 1.

ple may, after the same manner, yield up themselves to one powerful Man. We read in *Virgil*,

Nec cum se, &c.

*And when at length the Cruel War shall cease,
On hard Conditions may he buy his Peace,
Nor let him then enjoy Supreme Command.* Dryden.

It may also happen, that a Lord having large Possessions, will suffer no body to dwell in them upon any other Condition; or one may have a great many Servants, and make them Free upon Condition of acknowledging Subjection, and paying some Tribute: Of which we have many Instances. *Tacitus* speaks thus of the German Servants, *Every one has his Dwelling, and governs his own House. The Lord has what proportion of Corn, Cattle and Garments he requires from his Vassal, and the Servant yet obeys.*

Besides, as *Aristotle* said, some Men are naturally Servants, that is, turned for Slavery. And some Nations also are of such a Temper, that they better understand how to be govern'd, than to govern; which the *Cappadocians* seem to have been sensible of, when being offered their Freedom by the *Romans*, they preferred living under a King, declaring that they could not live without one. Thus *Philostratus* in the Life of *Apollonius*; It is a Folly to pretend to set the *Thracians*, *Mysians* and *Geræ* at Liberty, since they don't delight in it.

Besides, the Examples of other Nations, who for many Ages lived happily under (S) King-ly

K 3

(S) *Seneca* of Benefits, B. 2. Ch. 20. speaking of *Brutus*. Tho' he appears to me to be a brave Man in other things; yet in this he seems to

ly Government, may have influenced some. (1) The Cities under *Eumenes*, says *Livy*, would not change their Condition with any free City whatever. And sometimes the Constitution of a City is such, (2) that it seems not capable of being in Safety otherwise than under the Government of a single Person; which many wise Men thought to be the State of *Rome* in the time of *Augustus Caesar*. In such Cases then it not only may happen, but often does, that Men submit themselves to the Government and Power of another, as *Cicero* observes in his second Book of Offices.

But now as private Dominion (as I said before) may be acquired by a just War, so may also Civil Dominion, or the Rights of governing independent on another; neither should this be thought to be said only for preserving the Government of a single Person, where it is received; for there is the same Right and the same Reason for that of the Nobles, who govern a State exclusive of the People. For there is no State found so popular, but that those who are very Poor, or Strangers, the Women and young Folks, are excluded the Councils of State. (3) But now some People

to err mightily, nor to have behaved himself like a *Stoick*; who either dreaded the Name of a King, when the best Government is that under a just King, or hoped for Liberty there, where the Reward of governing and obeying was so great; or he thought the State might be recalled into its former Condition, having lost their Ancient Customs; or that he might reduce them to an Equality of Civil Rights, and establish the Ancient Laws, when he saw so many thousand Men ready to fight, not whether they should obey, but whom.

(1) So *Isocrates* relates that many came out of the free Cities of Greece to *Salamis* in Cyprus, where *Evagoras* reigned.

(2) *Dion* in *Philostatus*, B. v. Chap. 11. I fear lest the Romans being broken by long Subjection, can now bear no Change.

(3) Thus the Island *Salamis* was under the Dominion of the Athenians from the time of *Philaus* and *Euryfaces* the Sons of *Ajax*,

ple have other People under them, who are no less subject to them than if they were under Kings. Whence arises that Question in *Livy*, *Are the Colatine People in their own Power?* And when the *Campani* had delivered themselves up to the *Romans*, they are said to be under another's Jurisdiction. As *Acarner* and *Amphilochia* are said to be under the Power of the *Ætolians*. *Perea* and *Caunus* under that of the *Rhodians*. *Pydna* given by *Philip* to the *Olynthians*. And those Towns which had been under the *Spartans*, when they were delivered from their Government, were called *Eleutherolacones*, (freed *Laconians*) the City *Cotyora* is said to have belonged to the People of *Sinope*, in *Xenophon*. *Nice* in *Italy* was adjudged to the People of *Marseilles* in *Strabo*; and the Island of *Pithecusa* to the *Neapolitans*. So we read in *Frontinus*, that the Town *Calatis* was adjudged to a Colony of *Capua*, *Caudium* to a Colony of *Beneventum* with their Territories. *Otho* gave the Cities of the *Moors* to the Province of *Granada*, as it is in *Tacitus*. All which were absolutely void, if we allow, that the Right of Government is always

B. 1.

B. 7.

B. 26.

K 4

ways

as *Plutarch* tells us in *Solon*. *Augustus* took away this *Salamis* from the *Athenians*, as *Adrian* afterwards did *Cephalenia*, according to *Xiphilinus*. *Atarneus* of old belonged to the *Chians*, as *Herodotus* B. 1. The *Samians* also possessed many Towns in the Continent, as *Strabo* B. 14. *Anactorium* belonged partly to the *Corinthians*, partly to the *Corcyreans*, as *Thucydides* B. 1. Upon a Peace made with the *Ætolians*, in *Livy*, let the *Omeada* with both City and Fields, belong to the *Acarnerians*. Six Towns were given to *Halicarnassus* by *Alexander the Great*, says *Pliny*, Natural Hist. B. 5. c. 29. And B. 33. c. 4. he says that the Island *Lindus* belonged to the *Rhodians*. The same of *Caunus*, B. 35. *Cicero* witnesses the same in his Epistle to his Brother. *Eutropius* says, that many Cities were given to the same *Rhodians* for assisting the *Romans* against *Antiochus* B. 3. viz. those of the *Carians* and *Lycians*, which were again taken away from them by the Senate: Both are in the Extracts of *Polybius*.

ways at the Discretion and Will of the Persons governed.

But both Sacred and Prophane History do testify, that there are some Kings who are not subject to the People taken Collectively, *If thou shalt say* (said God to the Israelites) *I will set a King over me.* And to Samuel, *Shew them the manner of the King that is to reign over them.* Hence an anointed King is said to be *super populum*, above the people; and *super hereditatem Domini*, above or over the Inheritance of the Lord; and *super Israelem*, over Israel. Solomon King over all Israel. So David thanks God that he had subdued the People under him; and Christ says, *The Kings of the Gentiles exercise Dominion over you.* Remarkable is that of Horace,

Deut. 17.
14.

1 Sam. 8. 4.

1 Sam. 9.

16.

1 Sam. 10.

1.

1 Sam. 15.

1.

2 Sam. 25.

2.

1 Kings 4.

1.

Psalms

144. 2.

Luke 22.

39.

Regum timendorum, &c.

*The awful Kings o'er Nations sway,
Their Subjects tremble and obey;
The Kings themselves are rul'd by Jove.* Creech.

Seneca thus describes the three Forms of Government; Sometimes we ought to fear the People; sometimes, if the Government of the State be such that most things are transacted by the Senate, then those that are most in favour with them; and sometimes those particular Persons to whom the Power of the People, and over the People, is given. Such are those, whom Plutarch says, have not the Government by Law only, but also over the Laws. And in Herodotus, Oranes thus describes an Absolute Monarchy, To do what he pleases, without giving Account to any one. And Dion Pruseensis describes Royalty: So to govern, as not to give account to another. Pausanias to the Messenians, opposes Regal Government to that which must give account of its Actions.

Aristotle says, there are some Kings who have the same Power as the whole Nation has in another

ther place over their Persons and Goods. So after the Roman Princes began to assume to themselves the Regal Power, the People are said to have bestowed all their Dominion upon them, and Power even over themselves, as *Theophilus* expounds it. Hence is that Saying of *Marcus Antoninus*, No one but God only can be the Judge of a Prince; and *Dion*, B. 53. of such a Prince, He is free, Master of himself, and of the Laws, so that he does what he pleases, and what he does not please he need not do. Such a Kingdom was that of the (y) *Inachida* antiently in Greece at *Argos*; for in the *Argive Tragedy of Suppliants*, the People thus address the King in *Æschylus*.

*Thou art our City, and our Substance too;
Not subject to the Ties of Laws, thou stand'st
Supported by the Throne, as by an Altar,
And govern'st All with One Consent.*

Quite otherwise than King *Thestus* himself speaks of the State of *Athens* in *Euripides*.

*This City's Free, and won't obey one Lord;
The People's King, and annually confer
The Government on this, or that.*

For

(y) These are אנכים *Anakim*. *Deut.* ii. 10. from which Original comes אַנַּכִּי *Osra* the Goddess, to whom *Cadmus* built a Temple at *Thebes*. The Greeks called her *Pallas*. The *Inachida* are called by *Æschylus* *Pelasgi*, that is, banished Men, from the *Syriack* פֶּלֶשְׁטִי. They also that first inhabited *Lacedemon* were *Pelasgi*, whence the *Lacedemonians* said they were of Kin to *Abraham*, in the History of the *Macchabees*. But as the *Argive* Kings reigned with an Absolute Power, according to the Custom of the East, from whence they came; so did the *Thebans* from the *Phenicians* as appears from the Words of *Creon* in *Sophocles*, and of the *Theban Herald* in *Euripides's Supplicibus*.

For *Theseus*, as *Plutarch* explains it, was only their General in time of War, and the Guardian of their Laws, in other things upon a Level (z) with the Citizens. Hence it comes to pass, that Kings who are accountable to their People, may be said to be called Kings improperly. So after *Lycurgus*, and especially after the *Ephori* were constituted, the *Lacedemonian* Kings are said by *Polybius*, *Plutarch*, and (zz) *Cornelius Nepos*, to be Kings only in Name, and not in Reality; which Example others also follow'd in Greece. Thus *Pausanias* says (of the *Argives*) to the *Corinthians*, *The Argives, of old great Lovers of Equality and Liberty, have reduced the Kingly Power to a very low ebb; so that they have left to the Sons and Posterity of Cifus, nothing but the bare Name of a Kingdom.* So also *Plutarch* observes, That the Senate had Power to judge Kings among the *Cumeans*. *Aristotle* denies that such Kingdoms constitute any proper Form of Government, because they do but make a part in the State, either of Aristocracy, or Democracy.

Nay even among Nations, which were not always under Kings, we meet with (a) some Instances of a sort of temporary Kingdom, which is not subject to the People. Such was the Power of

(z) *Demophon* the Son of *Theseus* in the *Heracida* of *Euripides*

I do not Govern in a barbarous Way.

But pay just Honours where I justly Rule.

(zz) His words, or whosoever writ the Lives of the Illustrious Men, in *Agessilaus*. That they should have two Kings, more in Name, than Power; and in another place, But *Agessilaus* was King of the *Lacedemonians* in Name, not in Power, as the rest of the *Spartans*.

(a) *M. Lucius Salinator* in his Censorship took away the Freedom and Suffrage from all the Tribes except one, and thus shew'd that he had Power over the (whole Body of the) People,

of the *Amymones* among the *Cnidians*, and of the Dictators of old in *Rome*, from whom there was no Appeal to the People; whence a Dictator's Edict was held as Sacred, says *Livy*. Neither was there any Security but in a careful Obedience. And *Cicero*, that the force of the Regal Power was included in the Dictatorship.

The Arguments, which are brought for the other Opinion, are easily answered. For first, whereas they alledge, that the Person constituting, must be greater than the Constituted, it is only true in that Constitution, whose Authority does always depend upon the Will of the Constitutor; but not in that which at first was from the Will, but afterwards has the Effect of Necessity. As a Woman chuses her self a Husband, whom she must from that time always obey. (b) *Valentinian* told his Soldiers, who had made him Emperor, when they desired something which he did not like, *It was indeed in your power to chuse me your Emperor, O ye Soldiers; but after you have chose me, what you request is in my Power to grant, not yours. It is your Duty, as Subjects, to obey, and mine to consider what is proper to be done.* Neither is that true which is alledged, that all Kings are constituted by the People: Which may be easily understood, from the Examples of Masters of Families, who receive Strangers upon condition of Subjection, which we have already treated of.

1. Arg.

2. Another Argument they fetch from a Saying of the Philosopher, that all Government was ordained for the sake of the Governed, not of the Gover-

2. Arg.

(b) *Theodoret* thus relates his words. B 4. c. 5. *It was in your Power, O ye Soldiers, when there was no Emperor, to give me the Reins of Government; but since I have got them, it is not yours, but my Business, to consider what is convenient for the State.*

Governor; whence they conclude it follows, from the Nobleness of the End, that the Governed are superior to the Governor. But neither is that universally true, that all Government was designed for the sake of the Governed; for some Governments are of themselves for the sake of the Governor, as that of a Master over his Servant: For there the Benefit of the Servant is extrinſical and accidental: As the gain of the Phyſician does not belong to the Phyſick. There are other Governments which are for the ſake of a mutual Benefit, as that of a Husband. So ſome Empires may be obtained for the Profit of the Prince, as thoſe which are got by Conqueſt, and therefore are not to be reputed Tyrannical; for Tyranny, as the word is now taken, implies Injuſtice. Some Governments may alſo reſpect the Benefit as well of the Governor, as of the Governed, as when a People, unable to defend themſelves, chuſe a powerful King. But I do deny that in moſt Empires the Benefit of the Governors is reſpected by it ſelf; and that it is true, which *Cicero* ſaid from *Herodotus*, and *Herodotus* from *Heſiod*, That Kings were conſtituted to adminiſter Juſtice to the People. But it does not therefore follow, as they infer, that the People are ſuperior to the King: For Guardianſhip was deſigned for the Benefit of the Pupil; and yet it is a Right and Power over the Pupil. Neither does it avail, that a Guardian may be removed if he does not manage his Charge well; and therefore there ought to be the ſame Power over a King. For in a Guardian it is to be conſidered, that he has a Power Superior to him: But in Empires, becauſe there muſt be ſome Dernier Reſort, it muſt be fixt either in one Perſon, or in an Aſſembly; whoſe Faults, becauſe they have no ſuperior Judge, God declares, that he has a particular Regard to; who either

ther Punishes them, if there be a Necessity for it; or Tolerates them, for the Punishment or Tryal of a People.

It is admirably said of *Tacitus*; You must endure the Luxury or Covetousness of Princes, as you do Barrenness, or Excess of Rains, and the other Inconveniences of Nature: There will be Faults, as long as there are Men; but neither are these perpetual; and they are often recompensed by the intervention of better things. And *M. Aurelius* said, the Magistrate is to judge of private Persons, Princes of Magistrates, and (c) God of Princes. There is a remarkable place in *Gregory Turonensis*, where that Bishop thus addresses the King of France, If any one of us (O King) should transgress the bounds of Justice, he may be punished by you: But if you your self should offend, who shall call you to an account? For we speak to you, and if you please, you hear us; but if you will not, who shall condemn you? but he, who has declared himself to be Justice it self? Among the Opinions of the *Essenes*, *Porphyry* mentions this, (d) that Empire falls not to any one by chance, but by the special Providence of God. And *Irenæus* says excellently,

(c) *Aphilius*; God alone can judge of the Supreme Power: and King *Vitigis* in *Cassiodore*. The Cause of Regal Power is to be referred to the highest Judgment; since it came from Heaven, and owes its Innocence to Heaven only. And the King in the same *Cassiodore*, We cannot be Subject to another, because we have no Judges.

(d) *Homer*, τιμὴ, &c. *Jupiter* is the Fountain of Honour. *Diadorus Siculus* B. 1. of the Egyptians, For they think that Kings do not arrive to the highest Power above all, without a certain Divine Providence. And *St. Austin*, B. 5. of his City of God. Who gave the Power to *Vespasian*, both Father, and Son, most gentle Princes; and also to *Domitian* the most cruel: And, not to mention every particular one, He, who gave Majesty to *Constantine*, gave it too it to *Julian* the Apostate. And *Vitigis* in *Cassiodore*. All Dignity, especially the Royal, is to be esteem'd the Gift of God. It was a Saying of the Emperor *Titus*, That Powers were bestow'd by Destiny.

lently, *By whose Orders Men are Born, by his Command also are Kings Ordained proper for them, who in those Times are governed by them.* We have the same Sense in the Constitutions of Clement, *You shall fear the King, knowing that he is chosen of God.*

Neither is it an Objection to what I have said, that we read of some People punished for the Offences of their Kings; for this does not happen, because they do not punish, or restrain their King, but because they seem to give a tacit Consent to his Vices; or perhaps, without respect to this, God may make use of that Sovereign Power which he has over the Life and Death of every one of his Creatures, for the Punishment of their King, it being a peculiar Punishment to lose his Subjects.

IX. *Mutual
Subjection
refuted.*

IX. There are others who fancy to themselves a certain mutual Subjection, that if a King rules well, then all the People should unanimously obey him; but if he governs ill, he then should be subject to the People: Now if by what they say, they mean only, that our Obedience to our Sovereign, does not oblige us to do any thing directly wicked, they say but the truth; but this implies no compulsion, or any Right of Empire in the People. But suppose they had a design to divide the Government with the King, (of which we shall speak something hereafter) there ought to be Bounds assigned to the Power of each Party, which may easily be known by the distinction of Places, Persons, or Affairs.

But the goodness or badness of the Act, especially in Civil Concerns, which are liable to frequent Debates, are not fit to distinguish the Parts; from whence would necessarily follow the utmost Confusion, where the Right of Power is to be adjudged from the Pretences to good or evil Acts,
some

some favouring the King, and others the People; which Disorder no Nation ever yet (as I know of) was desirous to introduce.

X. Having confuted these Errors, it remains that we give some Cautions in order to direct us how to judge rightly, to whom the Sovereign Power in every Nation belongs. Let this then be the first, That we be not deceived by Names of ambiguous Sense, or the shew of outward Things. For Example, Tho' among the *Latins*, a Kingdom, and a Principality, are generally Opposites, as when *Cæsar* said, the Father of *Vercingetorix* had obtained the Principality of *Gaul*, but was slain for attempting the Kingdom; and when *Piso* in *Tacitus* said, that *Germanicus* was the Son of a Prince of the *Romans*, not of a *Partbian* King; and *Suetonius*, that *Caligula* wanted but little of changing his Principality into a Kingdom; and that *Marobodus* is said in *Velleius* not to have been contented with his Father's Principality, but ambitiously to have affected the Regal Power.

X. Cautions
in judging
of the Sovereign
Power.

Yet we see these often confounded together; for the *Spartan* Generals descended from *Hercules*, after they were subjected to the *Ephori*, were yet called Kings (as we have lately seen). And some ancient Kings of *Germany*, who, *Tacitus* says, ruled more by Perswasions, than Power. And *Aristotle*, and *Polybius*, called the *Suffes*, or chief Magistrate of the *Carthaginians*, *Βασιλεύς*, a King; *Diodorus* also, and likewise *Solinus* (e) calls *Han-*

(e) He that writ the Life of *Hannibal* says thus; For as at *Rome* they do the Consuls, so they do at *Carthage* yearly chuse two Kings. Among these Kings, (improperly so called) their Sons may also be reckoned, on whom their Fathers were pleased to bestow the Titles of Kings, themselves still retaining the Regal Power. Such a one was *Darius*, whom his Father *Artaxerxes* commanded to be put to Death, being condemned (for Parricide) as *Plutarch* relates it in *Artaxerxes*.

no King of the *Carthaginians*; and *Strabo* speaks of *Scapfis* in *Troas*, who having incorporated the *Milesians* into the City, set up a Republick, leaving the Name of King to the Descendants of their ancient Kings, and something of the Dignity.

The *Roman* Emperors, after they had openly and professedly assumed the Regal Power, were still called Princes. Nay, the Ensigns of Royal Majesty in some Free Cities use to be given to Princes.

But now the Assembly of States, that is, those who represent the whole of the People, are divided into three Orders according to *Gunter, Prælati, proceres, missisque potentibus Urbes. Prelates, Nobles, and Burgeses of Chief Towns.*

In other Places indeed they serve only to be the King's larger Council, by whom the Grievances of the People (which sometimes are neglected) by the Privy Council, may come to the King's Ear, who have also Power to determine them, as they shall think good according to Custom. And in other Places they have Power to take Cognizance of the Actions of the Prince, as also to prescribe Laws, which shall also oblige the Prince himself.

There are many that make the Difference between the Sovereign, and the lesser Powers, consist in the Translation of the Empire by Election or Succession, attributing the Sovereign Power to the Last, but not to the First. But this does not hold altogether true. For Succession is not the Title of the Empire, which assigns the Form of Government, but the Continuation of the same. For the Right begun in the Election of a Family, is continued by Succession; wherefore Succession gives as much Right as the first Election. Among the *Lacedemonians* the Kingdom was Hereditary, even after the Constitution of the *Ephori* (Inspectors.)

(Inspectors.) And of such a Kingdom or Principality *Aristotle* speaks, τῶν τῶν Βασιλέων αἱ μὲν κατὰ γένος εἰσιν, αἱ δὲ αἰρεταί. Of those Kingdoms, some are Hereditary, others Elective; And *Aristotle* and *Thucydides* both observe, that in the Times of the Heroes (f) most of the Kingdoms of Greece were so. On the contrary, the Roman Empire, even after all Power was taken from the Senate, and People, was conferred by Election.

XI. Another Caution may be this; (g) It is one thing to enquire concerning the Thing, and another concerning the manner of holding it, which prevails not only in things Corporeal, but also in Incorporeal. For as a Field is a Thing, so also is a Passage, an Act, a Way. But these some have by a full Right of Propriety, some by a Right Usufructuary (as a Farmer has to his Farm) and others by a Temporary Right. As the Roman Dictator had the Sovereignty by a Temporary Right. Lastly, Kings, as well those who are first elected, as those who succeed to them in a direct Line, hold it by an Usufructuary Right. But others by a full Right of Propriety, as they who in a Just War have obtained the Dominion, or he to whom any People, in order to prevent greater Mischief, have submitted without Conditions. Neither can I agree with those, who say the Roman Dictator had not the Sovereign Power, because it was not perpetual: For the Nature of Moral Things is known by their Operations, wherefore those Powers, which have the same Ef-

XI. The second Caution.

VOL. I.

L

fects,

(f) This is observed by *Dionysius Halicarnassensis*, B. 2. and 5.

(g) See at your leisure *Carolus Molinæus* of the Customs of the *Parisians*. Tit. 1. O. gl. 4. Num. 16 and 17.

(h) You have an Instance of a Governor made for a time in *Gregory*, the beginning of B. 4.

fects, should be called by the same Name. But a Dictator during his time (i) does all Acts by the same Right, as a King who has the best Right, neither can any Act of his be made void by another. But the Continuance alters not the Nature of a thing, tho' if the Question be concerning Dignity, which is generally called Majesty, doubtless he that has a perpetual Right, has the greater Majesty, than he that enjoys it but for a time, because the manner of holding adds to the Dignity. What has been said of Kings, may likewise be said of such, as during the Minority, Lunacy, or Captivity of their Kings, are so appointed Regents, (or Protectors); as not to be Subject to the People, neither can their Power be recalled before the time appointed by Law.

But it is otherwise with those who have a Right, that may be at any time recalled, that is precarious, or at the will of others, as was formerly the Kingdom of the *Vandals* in *Africk*, and (k) of the *Goths* in *Spain*, (l) whom the People might depose, upon any Dislike. And also every Act of theirs might be made void, by those who gave them a revocable Power, and therefore there is not the same Effect, nor the same Right.

XII. Some
Sovereign
Powers are
held fully,
with a Right
of Alienati-
on.

XII. Against what I have said before, that some Governments are held in full Right of Propriety, that

(i) So that the People, when they wanted to save *Fabius Rutilianus*, were obliged to Petition the Dictator.

(k) We have a mark of this ancient Custom in the *Behetrians*, See *Mariana*, B. 16.

(l) *Procopius* also in his second of the *Gothicks*, testifies the same of the *Hernuli*; and of the *Lombards*, *Paulus*, B. 4. *Wanafredi*, B. 6. Of the *Burgundians*, *Ammianus*, B. 28. of the *Moldavians*, *Laonicus Chalcocondylas*, of the King of *Agadis* among the *Africans*, *Johannes Leo*, B. 7. of the *Norwegians*, says *William of Newburg*, that they made him King, who killed the King. You have the like Examples of the *Quadi*, and *Fazyges*, in the Extracts of *Dion*.

that is, by way of Patrimony, some Learned Men make this Objection, that Free-men are not to be bartered away (as things bought and sold). But as the Power of a Lord is one thing, and the King's another; so is Personal Liberty different from that which is Civil; and so is the Freedom of singular Persons from that of States. For even the *Stoicks* acknowledge there is a kind of Service *iv υποτάξει in Subjection*; and in Holy Writ the Subjects of Kings are called their Servants. As then Personal Liberty excludes the Dominion of a Lord, so does Civil Liberty that of Empire, and all manner of Sovereignty properly so called. *Livy* thus opposes them, *Before Men had tasted the Sweetness of Liberty, they desired a King.* Again, *It was a notorious Shame, that the People of Rome, when they served under Kings, were never endangered by War, nor besieged by an Enemy, but being a free People should be besieged by the Hetrurians*; and in another place, *The People of Rome are not now under a King, but at Liberty.* And again in another place, (m) he opposes those Nations that were Free, to them that lived under Kings; and *Cicero* said, *Either the Kings should not have been expelled, or the People should have had their Liberty in Deed, and not in Words.* And after them *Tacitus*, *The City of Rome was at first under Kings, but L. Brutus brought in Liberty, and the Consular Government.* The Liberty

L 2

Liberty

(m) *Thucydides*. This *Teres* Father of *Sitalces* was the first that so far enlarged the Kingdom of the *Odrysa*, that he subdued the other Kings of *Thrace*, for there is also a part of *Thrace* free. And *Seneca* the Father, *sanctor. prima*, We are not to deliver our Opinions in a Free State, in the same manner as under Kings; and *Josephus* in B. 13. *Antiq. Hiftor.* To the Kings and Free People. *Cicero* *Epist.* 15. 4. the Aids of the Free Cities and Confederated Kings. *Pliny* B. 6. Ch. 20, of the *Indians*, Now they who live on the Mountains all along by the Sea side are Free, and not under Kings.

erty allowed by Arfaces is more severe than the Regal Power of the Germans. And Arrian to the Indians, βασιλευσι καὶ τῆσι πόλεσιν ὅσαι αὐτονομῶσι. To the Kings and Free Cities, (those that live after their own Laws.) And Cæcina in Seneca, The Regal Thunderbolts are those whose Force affects either the Assembly of the States, or the chief places of a Free City: (n) the meaning whereof is that the State is threatened with a Regal Power. So those Cilicians who were not under Kings were called Eleuthero Cilices, Free Cilicians. And Strabo says of Amisus, (a City of Paphlagonia) that it was sometimes free, and sometimes under Kings. And every where in the Roman Laws, that treat of War, and of Judgments of Recovery; Foreigners are distinguished into Kings and Free People. Here then the Question does not respect Personal but Civil Liberty. Wherefore in respect of private and publick Subjection, some Nations are said not to be at their disposal, or in their own Power. Hence that in Livy, which Cities, which Lands, which Men were once under the Power of the Ætolians. And again, Are the People of Collatia Free? Have they any Power over themselves? But properly, when a People is alienated, it is not the Persons themselves, but the perpetual Right of governing them, as they are a People. Thus when a freed Man is assigned to one of his Masters Children, the Freeman is not alienated, but the Right that relates to the Man is transferr'd.

And that is as weak, which alledges, that because a King Conquers other Nations by the Blood and Sweat of his own Subjects, therefore what he so Conquers, should rather belong to them than to the Prince. For it is possible, that the

(n) See an Instance of this unusual thing in Bizarus, B. 19. of the History of Genoa.

the King may maintain his Army (o) out of his private Estate, (p) or out of the Revenues of the Crown. For, tho' a King has but the Profits of that Patrimony in the same manner, as he has the Right of governing the People who have chose him, yet are those Fruits properly his own. As it is practised in the Civil Law, tho' an Inheritance be adjudged to be restored, yet the Fruits are not, because they are accounted received, not from the Inheritance, but from the thing. Therefore it may happen, that a King may so enjoy a Government (q) over some People in his own proper Right, that it may be in his Power even to alienate it. *Strabo* says, that the Island *Cythera* over-against *Tenarus* did belong to *Eurycles* a *Lacedemonian* Prince, *ὁν μερὰ τῆς οὐς ἰδίας*, in his own proper Right. So King *Solomon* gave to *Hiram*, (for so *Philo Byblius*, who translated the History of *Sanchuniathon*, calls him in Greek) King of the *Phenicians*, twenty Cities, not of those that belonged to the *Hebrews*. For *Cabul*, (which Name is given to those Cities) was seated without the Bounds of the *Hebrews*; but of those Cities, which the Enemies Jof. 19. 27. to the *Hebrews*, though conquer'd People, had held to that time, and were partly subdued by *Solomon's* Father-in-Law, the King of *Egypt*, and given to him in Dowry with his Daughter, and partly

L 3

(o) *M. Antoninus*, unwilling to lay any Taxes upon the People towards the *Bohemian* War, the Publick Treasury being exhausted, making an Auction in *Trajan's* Court, sold his Vessels of Gold, his Cups of Chrystal and Myrrh his Wife's and his own Cloaths of Silk and Gold, and many Ornaments of Jewels.

(p) Therefore *Ferdinand* claimed to himself that part of the Kingdom of *Granada*, which he had won with the Profits of *Castille*, during his Marriage, as *Mariana* informs us, B. 28. of his *Spanish History*.

(q) Those that accompanied *Baldwin* to the Holy War in the East granted to him, that he should have half of the Cities, Provinces, Tributes and Prizes taken in that War.

partly conquer'd by Solomon himself. For it is plain, that those Cities were not at that time inhabited by the *Israelites*, because after *Hiram* had restored them, then *Solomon* planted *Hebrew Colonies* in them.

Thus we read, that (r) *Hercules* having conquered the Kingdom of *Sparta*, gave it to *Tyndareus*, on Condition, that if *Hercules* left any Children of his own, he should restore it to them. So *Amphipolis* was given in Marriage Dowry to *Acama* Son of *Theseus*; and *Agamemnon* promises in *Homer* to give *Achilles* seven Cities. King *Anaxagoras* gave two parts of his Kingdom (s) to *Melampus*. And *Justin* tells us of *Darius*, that he bequeathed by Will his Kingdom to *Artaxerxes*, and to *Cyrus* the Cities, of which he was Governor. So it is probable, that the Successors of *Alexander* did succeed him, every one (t) in his allotted part, in the full Right

(r) The same *Hercules* having conquer'd the *Dryopes* that dwelt near *Parnassus*, presented them to *Apollo*. *Servius* on the 4th *Aeneid*. *Agimus* King of the *Dorians*, was assisted by *Hercules* in his War against the *Lapithae* and gave him part of the Kingdom by way of Reward. *Cyberus* King of *Salamis* wanting Issue, bequeathed his Kingdom by Will to *Teucer*. *Peleus* had the third part of the Kingdom in Dowry from *Eurylion* King of *Pibia*, according to *Apollodorus*, in *Livy* B. 1. *Proca* bequeathes the Kingdom to *Numitor*.

(s) See *Servius* on the 6th *Eclogue*. So in *Homer*, *Jobetes* gives his Daughter to *Bellerophon*.

Δῶκε δὲ οἱ τιμῆς βασιλῆϊδ' ἡμῖν παῖδός.

Which *Servius* upon *Virgil* expounds: He gave him his Daughter in Marriage, with Part of his Kingdom. And *Phenix* of *Peleus*.

Πολὺν δὲ μοι ὤπασε λαόν.

Ναῖον δ' ἐσχάτην ὁδὸν Δολοπείων ἀνδρῶν.

Much People he has settled on me,
They liv'd on Phthia's Borders, Rul'd the Dolopes.

Lanassa marrying *Pyrrhus* King of the *Epyrans*, brought to him the City *Corymba* taken by her Father *Agathocles* in War. *Plutarch* in *Pyrrhus*.

(t) *Ammianus* of *Persia*; but not with the exact Faith of an Historian; that every Nation was by Will transferred to the Rights of one Successor, B. 22.

Right and Propriety of governing those Nations, which either had been formerly under the *Persians*, or which they themselves obtained by the Right of Conquest; therefore it is not to be wondered at that they claimed to themselves the Right of Alienation.

(u) So when King *Attalus*, the Son of *Eumenes*, had made by his Will the People of *Rome* Heirs to all his Goods, they under the Name of Goods possessed themselves of his Kingdom. Of which *Florus* thus speaks, *Therefore by way of Inheritance the People of Rome held it as a Province, not by War, or force of Arms, but by a juster Title, the Right of a Will.* And afterwards, when *Nicomedes*, King of (x) *Bithynia*, dying, had made the People of *Rome* his Heirs, they immediately reduced the Kingdom into the form of a Province. And *Cicero*, in his second Oration against *Rullus*, says thus, *We have increased our Inheritance by the addition of the Kingdom of Bithynia.* So that part of *Libya*, called (y) *Cyrene*, was left by King *Appio* by Will to the *Romans*. *Tacitus*, in his 14th *Annal*, mentions some Lands which formerly belonging to King (z) *Appian*, were together with his Kingdom

L. 4

(u) *Val. Max.* says, *Attalus* in Gratitude bequeathed *Asia* to the People of *Rome* by the Equity of a Will; and *Sertorius* of the same thing in *Plutarch*, when the People of *Rome* held that Country by the best Right.

(x) See *Appion* of the *Mithridatick* and first Civil War.

(y) In which were the Cities *Berenice*, *Ptolemais*, *Cyrene*, *Eutop*, &c.

(z) *Appian* in his *Mithridatick*: *Appion*, a Bastard of the Family of the *Lagida*, bequeathed *Cyrene* by Will, *Ammianus* B. 21. we obtained *Lybia* the Dry by the last Will of King *Appion*. We got *Cyrene* with the other Cities of *Libya* *Pentapolis* by the Bounty of *Ptolemy*, for both *Appio* and *Ptolemy* were called Kings of the *Cyrenians*. See B. 70. of *Livy's* Breviary. This *Appio* himself had this Kingdom of *Cyrene* by his Father's Will. *Justin* B. 39. There is mention of the other *Appio* (recorded by *Ammianus*) who left *Lybia* the Dry to the

Romans,

dom bequeathed to the Romans. And in Cicero, who knows not that the Kingdom of Egypt was bequeathed

Romans, in Eusebius's Chronicle at the Year 1252. Besides, Procopius tells us in *Ædificiis*, that *Asfages* by his Will divided Armenia the Greater to *Asfages*, the Less to *Tigranes*. We read in *Josephus*, that *Herod*, upon *Augustus's* giving him leave to give his Kingdom to which of his Sons he pleased, did often alter his Will, *Antiq. B. 15* and *16*. This was also the Custom of the *Goths* and *Vandals* in those Places which they held by Right of War. *Giserich* the *Vandal* left *Spain* by Will, *Procop. Vandal 1*. *Theodorich* gave *Lilybaeum* in *Sicily* in Dowry with his Sister *Amalefrida*, *Procop. ibid.* And also other Nations. *Pepin* divided *Aquitain*, gained by War, among his Children. *Tredegarius* in the end of his Chronicle. See *Aymonius 3. 68.* and *75.* of *Burgundy* left by Will. The King of *Fesi* bequeathed *Fesi* to his second Son *Leo Afer*, *B. 3.* whom see of *Bugia. B. 5.* Sultan *Aladin* bequeathed many Cities to *Osman*, *Leunclavius Turk. Hist. B. 2.* The Son of *Germeanus* the King gave the Cities of *Phrygia* with his Daughter in Marriage to *Bajazet*. The same *Leunclave, B. 5.* *Musal* divided among his Children the Turkish Dominions in *Cappadocia*. *Nicetar. B. 3.* *Chusein Bega* gave the Cities near the *Euxin Sea* to *Murat*, *Leunclave, B. 1.* *Bajazet* gave the Cities of *Servia* to *Stephanus* in favour of his Wife, Sister to *Stephanus*, *ibid. B. 6.* Sultan *Mahomet* left the Kingdom by Will to *Murat*, *ibid. B. 12.* *Jacques Bega* *Germeanogius* made Sultan *Murat* Heir to his Dominions, *ibid. B. 14.* *Mahomet* the Turk designed to have left *Turky* in *Europe* to his Son *Amurath*; and that in *Asia* to his Son *Mustapha*, in *Chalcocondyla, B. 4.* *Basilius Porphyrogenetus* the Emperor was appointed Heir by *David Curopalates* of that Country which *David* held in *Iberia*, according to *Zonaras*. I come to the Christian Conquerors in the East, *Michael* the Despot divided *Thessaly* between his Children, in *Gregor. B. 4.* A Prince of *Ætolia* left *Athens* to the *Venetians*, and sold *Beotia* to *Antonius*, *Chalcocondyla, B. 4.* *Messena*, *Isthme*, and the Country of *Arcadia* bordering on the Sea, were given by a Prince in Dowry with his Daughter to *Thomas* the *Græcian* Emperor, *ibid. B. 5.* *Acarnania* was divided among his Natural Sons by the Will of Prince *Charles*. The parts of *Ætolia* given to his Kindred, *ibid. Chalcocondyla*. So were the Kingdoms of *Jerusalem* and *Cyprus* partly bequeathed by Will, partly transferred by Contracts. See *Bembo* of *Cyprus Italic 7.* and *Papua. B. 1.* The Town of *Castrum* was given to the *Genuates* in *Sardinia*, and another to the Dominion of *Calari*. *Bizanus* of the *Pisan War, B. 2.* *Robert* gave *Durazzo* and *Aulon* to his younger Son *Baimund*. *Anna Commena. B. 5.* *Alonso* of *Aragon* left the Kingdom of *Naples*, as conquered by War, to his Natural Son *Ferdinand*. In the same Kingdom *Ferdinand* bequeathed some Cities to his Nephew, *Marrinus B. 39.*

queathed by Will to the Romans by the King of Alexandria? Mithridates in Justin, speaking of Paphlagonia, says, Which fell to his Father not by Force, not by Arms, but by a Testamentary Adoption. The same Author also relates, that Orodes King of Parthia, was a long while debating, to which of his Sons he should leave his Kingdom. And Polemo, Prince of the Tifarenians, (a People of Cappadocia) and of the Country adjoining, left his Wife Heiress of his Dominion; which also Mausolus had formerly done in Caria, tho' he left several Brothers alive.

XIII. But in Kingdoms, which are disposed of by the People, I confess (a) it cannot be presumed, that it was ever their Design to allow the King to alienate his Kingdom. Wherefore what Cranzius observed in Unguinus, as a thing never heard of, that by his Will he had bequeathed Norway, we have no Reason to blame, if he had only respect to the Customs of the Germans, among whom there was no such thing allowed, as to bequeath Kingdoms. For whereas Charles the Great, Lewis the Good, and also others afterwards among the Vandals and Hungarians, are said to have disposed of their Kingdoms by Will, that had rather the Force of a Recommendation (b) to the People, than of a true Alienation. And of Charles, Ado especially mentions, that he much

XIII. Some are held not so fully.

(a) Vopiscus in Tacitus says, that an Empire ought not to be left as Fields and Servants. *Salvian*. He could not bestow by Will, on the Poor, those Nations which he governed.

(b) See the 12th Chapter of the Convention at *Constance*, under Charles the Bald. Hither refer the Will of *Pelagius*, by which he left Spain to *Alfonso*, and *Olmefinda*, and of Denmark something in *Saxon*. Neither is it any wonder then, that some Wills have been made void by the Peoples disliking them, as that of *Alfonso* of Arragon. See *Mariana*, B. 10. and of *Alfonso* of Leon, when he preferred his Daughters before his Son, *ibid.* *Mariana*, B. 12.

much desired to have his Will confirmed by the Peers of *France*. The like we meet with in *Livy*, that *Philip* King of *Macedon*, when he designed to disinherit his Son *Perseus*, and settle the Crown upon *Antigonus*, his Brother's Son, he went over all the Cities of *Macedon* to recommend *Antigonus* to the Princes (c). Neither does it argue that the said *Lewis* restored the City of *Rome* to Pope *Paschal*, since the *French* having received the Sovereignty over the City from the People of *Rome*, might well restore it to the same People, in the Person of him who represented 'em, as being Chief of the first Order.

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XIV. Some Power not Supreme, yet fully held.

XIV. What we have hitherto advised, that we take care to distinguish the Supreme Power it self, from the manner of holding it, is so true, that not only most Sovereign Dominions are not held in a full Right, but also many not Sovereign are yet held in a full Right; whence it happens (d) that Marquissates and Earldoms are more easily sold, and bequeathed by Will, than Kingdoms.

XV. This appears from assigning Tutors, and Protectors in Kingdoms.

XV. There is also another Mark of this Distinction (e) in the Regency and Protectorship of a Kingdom, whilst the King is disabled, either by Age or Sickness, from performing his Duty. For in Kingdoms not Patrimonial, the Protectorship belongs to those, to whom the publick Laws,

OR

(c) See a like Case in *Cassiodore*, B. 8. Epist. 8. &c. So the mutual Covenants of Succession made between *Sancho* and *James*, *Aragonians*, were confirmed by the Nobles, *Mariana*, B. 12. and of *Henry* King of *Navarre*, whereby he made *John* his Heir, *Ibid.* Mar. B. 13. And of *Isabella*, Queen of *Castile*, *Ibid.* B. 28.

(d) See *Mariana* of the Principality of *Urgelius*, B. 12. Chap. 16.

(e) See *Cushman*, Tome 1. Conf. 41. Num. 11.

or upon their deficiency (f) the consent of the People shall consign it. But in Kingdoms Patri-
monial, then it belongs to those (g) whom the
Father, or nearest Kindred shall chuse. Thus we see
in the Kingdom of *Epirus*, which was first de-
rived from the Consent of the People, that Tu-
tors (h) were publickly appointed to their young
King *Ariba*; and by the Nobles of *Macedon* to
the posthumous Son of *Alexander* the Great: And
in *Asia* the less, that was won by the Sword, *Eu-
menes* at his Death appointed his Brother Pro-
tector to his young Son *Attalus*: So did *Hiero* in
Sicily nominate to his Son (or Nephew) *Hierony-
mus* by his Will what Tutors he pleased.

But whether the King is in his own private
Right Lord of the Lands, as the Kings of *Egypt*
after the times (i) of *Joseph*, or as the Kings
of *India*, according to *Diodorus* and *Strabo*, or
whether he is not, for this is Extrinsic to the
Empire, nor belongs to the Nature of it: There-
fore it can neither constitute another kind of
Government, nor change the manner of hold-
ing it.

XVI. The third Observation is this, That an
Empire ceases not to be Sovereign, tho' he that is
to govern (k) promises some things to God, or to
his Subjects, even such things as do properly be-
long

XVI. So-
vereignty
not lost by
any Promise
made of
things,
which be-
long not to
the Law of
God, or
Nature.

(f) See *Mariana* in *Alfonso V.* King of *Leon*. But the Testa-
ment of King *John* concerning the Protectorship and Administra-
tion of the Government of the Kingdom was rejected by the No-
bles. *Mariana*. B. 18.

(g) *Ptolomy* King of *Egypt* left the People of *Rome* Protectors
to his Son. *Val. Max.* B. 6. Chap. 6.

(h) And by the *Macedonian* Princes for the Posthumous Son of
Alexander the Great. *Justin.* B. 13.

(i) And the Kings of *India* according to *Diodoro*. B. 2:

(k) The Emperor *Trajan* imprecated the Vengeance of the Gods
on his own Head, and right Hand, if he had knowingly transgres-
sed;

long to the very manner of his Government. I do not here mean of things relating to the Laws of God, of Nature, or Nations, to which all Kings stand obliged, tho' they have promised nothing; but I speak of some Rules, to which they cannot be obliged but by their Promise. What I say may be easily proved by comparing it with the Power of a Master of a Family, who tho' he has promised to do something for the Family, which may be for the Advantage of it, shall not therefore cease to have the same Power in his Family, as before. Nor does the Husband to have Power over his Wife, tho' he has before made certain Promises to her.

Yet I must confess, where such Promises are made Sovereignty is thereby somewhat confined, whether the Obligation only restrains the Exercise of the Act, or the very Power it self. If it only restrain the Exercise of the Act, then what is done contrary to Promise, is unjust; because, as we shall shew elsewhere, every true Promise gives a Right to him to whom it is made. But if it restrain the Faculty self, then it will also be void, for want of a Faculty to do it. Neither does it from hence follow, that he, by so promising, grants there is any Power above him; for that Act is not made void in this Case, by a Superior Power, but by Right it self. Among the *Persians* their Monarch was, *αυτοκρατορ* & *αυτοκρατορ*, Absolute, and accountable to none, as *Plutarch* declares, and adored as God's own Image; nor as it is in *Justin*, was he changed but by Death.

See; *Pliny*, *Paneg.* and *Adrian* swore, that he would never punish a Senator but by a Decree of the Senate; and *Anastasius* swore, That he would keep the Decrees of the Council of *Chalcedon*. Witness *Zonaras*, *Zedrenus*, and others. The late *Grecian* Emperors took an Oath to the Church; see the same *Zonaras* in *Michael Rangabes* and elsewhere. See also an Example in the *Gothish* Kings in *Cassiodorus* 10. 16. 17.

Death. He was a King who said to the *Persian Nobility*, *That I should not seem to rule by my own Advice alone, I have summon'd you, but remember it is your Duty to Obey, rather than Advise.* And yet this very King had taken Oath at his Coronation, as *Xenophon* and *Diodorus Siculus* observe; and it was not allowable for (l) him to change the Laws that were ratified by a certain Formality, as both *Daniel's History* and *Plutarch* in his *Life of Themistocles* inform us, *Diodorus Siculus* too, B. xvii. and a long time after *Procopius* in his first Book of the *Persian War*, where there is a remarkable Example to (m) this purpose. As the same *Diodorus* relates the *Ethiopian* and *Egyptian* Kings, (who doubtless, as all other *Eastern* Kings had an Absolute Power) were yet obliged to observe many things (by their Promises) which if they did not perform, during their Lives, they could not be called to an account; yet after their Deaths, their Memories (n) might be arraigned, and being found Guilty were refus'd Solemn Burial; as the Bodies of the deceas'd *Hebrew* Kings, who had reign'd wickedly, were not interr'd in the *Royal Sepulchres*; by an Excellent Constitution, whereby the Sacredness of Sovereign Majesty was preserv'd, and yet their Kings were restrain'd from breaking their Oaths

2 Chron.
24. 25.
28. 27.

(l) *Josephus* in the Story of *Vashti*. He could not be reconciled to *Vashti*, because the Decree was gone out; such Laws. (or Decrees) were called the Laws of the Kingdom, as *Jacchiades* observes upon *Daniel*, ii. 13. See *Mariana* of the Laws of the Kingdoms in *Spain*. B. 20.

(m) And the same Author relates, that a Decree or Law was changed by the King concerning the *Castle Lath*, but does not approve of it.

(n) The Laws order the Bodies of Tyrants to be thrown out unburied beyond their Territories. *Appian*, 3. Civil. *Andronicus* the Emperor denied his own Father, *Michael*, Solemn Burial, because he followed the *Latin Faith*. *Gregor*. B. 6.

(o) See *Josephus* of the two *Forme*, the one King of *Juda* the other of *Israel*. B. 8. Chap. 3. and 5. also of *Jeshu* King of *Juda*.

Oaths for fear of a future Condemnation. (p) *Plutarch* also tells us in the Life of *Pyrrhus*, that the Kings of *Epyrus* were accustomed to take an Oath, that they would govern according to the Laws.

Further, suppose a King upon breaking his Faith, should (q) lose his Kingdom, yet even so the Power does not cease to be Supreme, but the manner of holding it will be impaired by such a Condition, and the Government will not be unlike a Temporary one. *Agatharchides* said, a King of the *Sabeans*, was ἀνομιβος, unaccountable for his Actions, and yet if he were found without his own Palace, he might be stoned to Death, which *Strabo* also observes out of *Artemidorus*.

So that Land, which is held by a Feoffment in Trust, is during that time held as fully as if it were by Absolute Property; but yet it is capable of being lost; and such a Conditional Law may be added not only in conferring of a Kingdom, but also in other Contracts. For we see some Leagues made with neighbouring Princes upon such Terms (r).

XVII. It may sometimes be divided.

XVII. The fourth Observation is this, Tho' the Sovereign Power be but one, and of it self undivided, consisting of those parts above mentioned, with the addition of Supremacy, that is, τῷ ἀνυπευθύνῳ, accountable to none, yet it may happen, that

(p) His words are. The Kings were wont in the Country of the *Cassians*, which is part of *Molossia*, to Sacrifice to *Jupiter Arctus*, and to swear to the *Epirots*. And the Kings swore that they would govern according to the Laws, and the *Epirots*, that they would defend his Kingdom according to those Laws.

(q) See an Example in *Grantzins* l. 9. *Suediorum*.

(r) Also that the Subjects should not assist a King that broke the Laws, nor so much as obey him, see *Crommer* in his *Polonics*, xix and xxi. There is also an Example in *Schaffnaburgensis*, in the Affairs of *Henry*. Anno 1674.

that sometimes it is divided, either by Parts, which they call Potential, or by Parts Subjective. Thus tho' the *Roman* Empire was but one entire thing, yet it often happened, that one ruled in the *Eastern* Part, and another in the *Western*; nay, and sometimes the Empire of the World was divided among three. So also it may happen, that the People chusing a King, may reserve some Acts to themselves, and confer others on the King to be held in full Right. Neither yet is this done, (as I have shewed already) as often as the King is obliged by some Promise. But then only it is understood to be done (r) when either the Partition is expressly made, (of which also we have treated above) or when the People being (as yet) free, shall require it of the King, whom they are chusing, by way of a perpetual Law; or if any thing be added, whereby it is imply'd, that the King may be compelled or punished. For a Precept is from a Superior, at least in that which is commanded. But to compel does not always imply a Superior, for naturally every Man has Power to compel his Debtor; but it is repugnant to the Nature of an Inferior; therefore from Compulsion there at least follows an Equality, and consequently a Division of the Sovereign Power.

Many alledge several Inconveniences against this two-headed State, but (as I said before) in Civil Matters it is impossible to provide against all Inconveniences, neither is any thing accounted Right, because it seems so to this or that Person, but

(r) See *Zeamus* of singular Answers, B. 2. Cap. 31.

(s) So in the Time of *Probus* the Senate confirmed the Prince's Laws, took Cognizance of Appeals, appointed Proconsuls, gave Legats to the Consuls. See *Gnil. B. 2. Observ. 57. Num. 7.* And Cardinal *Mantica* of Tacit and Ambiguous Conventions, B. 27. Tit. 5. Num. 4.

but from the Will of the Lawgiver. An old Example of this is brought by *Plato* in his third Book of Laws. For the *Heracidae* (the Posterity of *Heracles*) having built *Argos*, *Messena* and *Lacedemon*, their Kings were obliged to govern according to Laws prescribed to them; and whilst they did so, the People were bound to continue the Kingdom to them and their Posterity, nor suffer any one to take it from them, and for the Confirmation of it, the Kings not only obliged themselves by Oath to the People, and the People themselves likewise to the Kings, but the Kings also bound (u) themselves to each other, and to the People, and the Kings gave their Faith to the neighbouring People, and the People to the neighbouring Kings, each of them interchangeably promising Mutual Assistance to one another.

XVIII. ill
inferred
from this,
that some
Princes will
have their
Acts con-
firmed by
the Senate.

XVIII. But they are much mistaken, who suppose, because some Kings will not allow some of their Acts to be of Force, till they are ratified by the Senate, or some other Commissioners, that there is a Partition of Power. For whatever Acts are thus repealed, ought to be reputed as repealed by the King's Authority, who by that Means would take Care, that nothing deceitfully obtained of him, shall pass for his real Will; this was the Design of King *Antiochus* the Third's Answer to the Magistrates, that they should not obey him, if he commanded anything contrary to Law; and of *Constantine's*, that Orphans and Widows should not be forced to come to the Emperor's Court for Judgment, (x) tho' the Emperor's Letter were produced. Wherefore this is like those Wills, which have this Clause added to them, that no Will

(u) There are many Examples in the History of the Northern Nations. See *Johannes Magnus* in *Hist. Sued.* B. 15, and 29. *Crantzius*, *Sued.* 5. *Pontanius*, *Danic.* 8.

(x) Add B. 1. C. de *Petitionibus bonorum sublati*.

Will hereafter made shall be of force. For such a Clause implies, that a later Will would not proceed from the real Intent of the Testator. But as this Clause, in a Will, so may the Act of a Prince be repealed by his express Command, or any special Declaration of his later Will.

XIX. But neither am I inclined by the Authority of *Polybius*, who would have the *Roman* be a mixt Republick, which at that time, if we respect not so much the Acts themselves, but the Right by which they were done, was merely Popular. For as well the Authority of the Senate, which he refers to Optimacy (the Government of the Nobles) as of the Consuls, which he compares to Monarchy, were equally subjected to the People. The same may be said to all the other Opinions of those that pretend to write of Politicks, who perhaps may think it more agreeable to their purpose to regard the External Shew, and the daily Administration (of the Government) than the very Right of it.

XIX. Some other Examples ill drawn.

XX. More to the purpose is that of *Aristotle*, who writes, that between a full and absolute Monarchy, which he calls *αυτοκρατορία*, a Power wholly Regal (the same is *παντελής Μοναρχία* (y) a complete Monarchy, in *Sophocles's Antigone*; *αυτοκρατορίας βασιλεία*; & (z) *ἀνυπεύθυνος* &c, an Independent, and Unaccountable Government, in *Plutarch*; *ἄρρηκτος αὐτοτελής*, an uncontrollable Power, in *Strabo*) and a *Laconian* Kingdom, which is a mere Principality, there are some sorts of Kingdoms of a mixt Kind to be interposed; of which we have an Example (I think) in the *Israelitish* Kings, for without doubt in most things they ruled with a Sovereign Power. For the People

XX True Examples

(y) For the *Tragedians*, as we have observed on, § 8. make the *Theban* Kingdom like those of the *Phenicians*, whence they were derived.

(z) So *Dionysius Halicarnassensis* of the *Laconian* Kings, for the *Lacedemonian* Kings did not enjoy a full Power.

ple desired a King, (a) such a one as the neighbouring Nations had; yet the Eastern Nations were slavishly governed. Thus *Æschylus* brings in *Atossa* speaking to the *Persians* of their King, *ἐκ υπεύθυνος πόλει*, not accountable to the City. And that of *Virgil* is common,

Not Egypt, India, Media more
With Servile Awe, their Idol King adore.

Dryden.

And in *Livy*: The Syrians, and People of Asia, are Men born to Slavery; to which agrees that of *Apollonius* in *Philostratus*, *Ἀσύριοι, καὶ Μηδοὶ τὰς τυραννίδας προσκυνεῖσι*; The Assyrians, and Medes adore Sovereignty; and That of *Aristotle*, *οἱ δὲ τῆς Ἀσίας κοινῶς καὶ δεσποτικὴν Ἀρχὴν εὐδὲν δυσχεραίνοντες*; The Asiatics submit to Monarchy without repining; and in *Tacitus*, That of *Civilis Batarus* to the Gaules, (b) Let Syria and Asia serve, and the East accustomed to Kings. Tho' at the same time there were Kings in Germany

(a) The People thought (to use *Josephus's* words,) that it was not unreasonable, since the neighbouring Nations were governed by Kings, for them also to observe the same Form of Government.

(b) *Cicero* of the Consular Provinces, The Jews and Syrians, People born to Slavery. *Euripides* in *Helena*; All things, but one, are in Bondage among Barbarians; which is copy'd from *Æschylus*, in which is, For Jupiter alone lives Free. Like to it is that of *Lucan*. Caesar alone of all the World is Free. *Sallust* of the Eastern Nations. The Reverence of the Regal Name is so natural to them, *Servius*, and *Phylargyrus* quote This upon a place in the *Georgicks*. *Apollonius* of *Damis* in *Philostratus*, B. 7. Being an Assyrian, and Neighbour to the Medes, he has no aspiring Thoughts of Liberty. *Julian* against the Christians, Why should I now particularly declare the Nature of the Germans, Lovers of Liberty, and impatient of Bondage; on the contrary the Syrians and Parthians are easie to bear Despotick Rule, and all those barbarous Nations that lye to the East or South, and as many as are content to live under Despotick Kings? And *Claudian*,

We have not given the apt Sabæans up
To be thy Slaves —
Nor made thee Lord of the Armenian Coast.

many and Gaul, but as the same Author observes, they govern'd in a precarious Manner, more by a persuasive, than commanding Power.

We have also observed before, that the whole Hebrew Nation was under their King; and Samuel describing the Right of Kings, fully proves, that there remained no Power in the People against the Injuries of their Kings, which the Ancients rightly gather from that of the Psalmist. *Against thee, thee only have I sinned.* Upon which St. Jerom descants; *Because as a King, (c) he feared no Man.* And St. Ambrose, *he was subject to no Laws;* for Kings are free from Chains for their Faults, neither can they be punished by any Laws, being (cc) secured by the Power of the Empire. Therefore he did not sin to Man, because he was accountable to no Man for his Actions. We may read the same in Isidore of Pelusium, in his Epistle published in the Year 383. I know indeed that the Jews themselves grant, that if their Kings offended against those Laws, which were written concerning the Duty of a King, They were scourged for it, and this was no Reproach among them, but was freely undergone by the King by way of Penance, neither was it done by a publick Officer, but by one whom he might chuse himself; but from all compulsive Punishment their Kings were so free, that the very Law of Excalceation (*the pulling off the Shooe*) because it had something of Dishonour in it, did not affect them. The Sentence of the Hebrew Barnachman is still extant in the Sayings of the Rabbins, under the Title of Judges, *No Creature judges the King, only the blessed God.*

M 2

Yet

(c) The same Jerom in his Epistle to Rustica de Panis. For he was a King, he feared no Body, he had no Superior.

(cc) Arnobius Minor has the like, upon the same Psalm. *Vitiges in Cassiodore.* The Cause of Regal Power is to be referred to the Tribunal above. for as it came from Heaven, so it owes its Innocence only to Heaven.

Yet notwithstanding all this, there were some Cases which, I suppose, the Kings had no Right to Judge, and were referred to the *Sanhedrim* (the Council) of 70 Elders, which being instituted by *Moses* at God's Command, continued without any Interruption to the Days of *Herod*. Wherefore both *Moses* and *David* called the Judges *Gods*, and their Judgments *God's Judgments*. And the Judges are said not to judge for Man, but in God's stead; and in the last quoted place of *Chronicles*, there is a plain distinction made between the things of God, and the things of the King. Where by the things of God, (as the most Learned among the *Jews* interpret it) are meant, the administering of Judgment, according to the Laws of God. I do not deny, but that the Kings of *Juda* did of themselves sometimes inflict Capital Punishment, in which *Maimonides* prefers them to the Kings of *Israel*, which plainly appears from many Examples, as well in Holy Writ, as in other *Hebrew* Authors; but the Cognizance of some Causes was not allowed to them, as that of the Tribes, of the High Priests, (d) and of the Prophets; and this is plain from the Story of the Prophet *Jeremy*, whom when the Princes demanded to put to Death, the King answered them, *Behold he is in your Power, and the King can do nothing against you*. Yea, and he who was for any other Cause condemned by the *Sanhedrim*, could not be released by the King himself; therefore *Hyrchanus* (when he could not otherwise save him) advised *Herod* to fly.

In *Macedonia*, those that descended from *Caranus*, as *Callisthenes* relates in *Arrianus*: *ε βία ἀλλὰ νόμῳ Μακεδόνων ἄρχοντες διετέλεσαν*, obtained the Government.

(d) A Prophet cannot perish out of *Jerusalem*, *Luc.* 13. 33.

vernment of the Macedonians, not by Force, but by Law; and Curtius, in his 4th Book, tho' the Macedonians were used to Regal Government, yet they had a greater Taste of Liberty than other Nations: For the King himself could not put a Citizen to Death: And the same Author in the 6th Book, *It was the Ancient Custom of the Macedonians in Criminal Cases to be judged by the Army, and in times of Peace by the People, the King's Power extended no farther than his Authority.* There is also in another place of the same Author another Instance of the same Mixture, *The Macedonians decreed, that according to the Custom of their Nation, their King should never hunt on foot, but in the Company of his select Princes and Friends.* And Tacitus of the Goths, *They were under a somewhat stricter Government than others of the German Nation, yet not entirely without Liberty.* For he had before described a Principality, as governing by a Persuasive, not Compulsive Power; but a compleat Kingdom in these Words, *when one Rules without any Limitation (or Exception) not by a precarious Right.* And Eustathius upon the 6th of Homer's *Odysses*, describing the Republick of the *Corcyreans*, said it was (e) *A mixture of Regal and Aristocratical Government.* I observe that there was something like this in the Times of the *Roman Kings*: For then almost all publick Affairs were

M 3

managed

(e) *Laonicas Chalcocondylas* says, the *Hungarians* and *English* have the same Government, B. 2. the *Arragonians* and *Navarrois*, B. 5. Where the Magistrates are not made by the King nor Garrisons imposed on them against their Will, nor any thing commanded the People contrary to their Customs. Some Kings have full Power, others are under Laws, says the Jew *Levi Gerson* upon 1 Sam. 8. 4. Strange are those things which *Pliny* writes of *Taprobanes*, B. 2. Cap. 13. The King is chose by the People for his Age and Clemency, having no Children; and if he afterwards get any, he abdicates, lest he should make the Kingdom Hereditary. They have 30 Governors.

managed by the Regal Power. *Romulus* (says *Tacitus*) governed us, as he pleased; and it is certain, that in the first beginnings of the City, the Kings had the sole Power, says *Pomponius*. Yet *Dionysius Halicarnassensis* affirms, even at that very time, that some things were reserved in the People. But if we had rather believe the *Romans*, in some Cases, Appeals might be made from the King to the People, as *Seneca* gathers out of *Cicero's* Books of a Commonwealth; and also out of some Pontifical Books, and *Fenestella*. Afterwards *Servius Tullius* being advanced to the Throne, not so much by Right, as Popular Favour, did much more lessen the Royal Prerogative; for, as *Tacitus* says, he enacted some *Laws*, which obliged the Kings themselves. Wherefore no wonder if *Livy* makes only this Difference between the Power of the first Consuls, and of Kings, that it was yearly.

The like mixture of Popular and Aristocratical Government was in *Rome* during an Interregnum, and in the times of the first Consuls. For in some things, and those of moment, whatever the People commanded was made a Law, (f) if the Senators

governors appointed by the People, and no Man to suffer Death, but by the Majority of Votes. So also there is Appeal to the People, 70 Judges are appointed. If no more than 30 declared a Person not guilty (for so it is here in the Law) they lose their Dignity with the highest Reproach. The King is dressed like *Bacchus*, the People like the *Arabians*. If the King offends he is adjudged to die, no body putting him to Death; but all abhorring him, and denying to have any Discourse with him. *Servius* upon that 4th of the *Æneid* *populumque patrēsq̃ue*. Some in this place will have the three Parts of Government comprehended, the People, the Nobles, and the Kingly Power; for *Cato* said *Carthage* was governed by those three.

(f) *Plutarch* in *Coriolanus*. The People shall not have Right either to make a Law, or of commanding any thing else, unless the Authority of the Senate first approve it. *Chalcocindylas* observes there was the same mixture in the Republick of *Genoa* in his time. B. 5.

nators were the Proposers of it; Which afterwards, the People's Power encreasing, there only remained the shew of former Authority, for the Senators still proposed Affairs to the People, but were no ways certain that they would follow their Advice, as *Livy* and *Dionysius* observe. Yet there remained some of this mixture afterwards, whilst (as the same *Livy* says) the Sovereign Power was in the Patricians, (that is the Senate) and the Auxiliary Power in the Tribunes (that is the People) who had a Right to forbid, or to intercede. And thus *Isocrates* would have the Republick of *Athens* to have been in the time of *Solon*, *A Democracy mixed with an Aristocracy*. These things being premised, let us examine some Questions, which are often produced on this Subject.

XXI. The first is, whether that Nation can have a Supreme Power, which has made a League with another upon unequal Terms. By unequal Terms, I mean not where the Confederates are of unequal Power, as when the City of *Thebes* in the time of *Pelopidas* made a League with the King of *Persia*, and the *Romans* formerly with the *Massilians*, and afterwards with King *Masinissa*; nor a League that implies some transient Act, as when an Enemy is reconciled, upon paying the Charges of the War, or performing some such thing. But I mean, where by the express Articles of the League some lasting Preference is given from one to the other; that is, when the one is obliged to maintain the Dominion and Honour of another, as it was in the League of the *Ætolians* with the *Romans*, whereby the *Ætolians* were obliged to use their Endeavours to preserve the Safety, as well as Dignity of the *Roman* Empire, which Dignity is sometimes called Majesty; and by *Tacitus* the Reverence of the Empire; which he thus explains, *Tho' they continue in their own Place, and their*

XXI. A
Confederate
on unequal
Terms may
have the
Supreme
Power.

own Bounds, yet in Mind and Will they act with us. So *Florus*, The other Nations, tho' free, yet perceived the Greatness of the Roman Empire, and revered the People of Rome as the Conquerors of so many Nations. To which we may also refer some Rights due to them that undertake the Patronage, Protection or Defence of others; and the Rights which Mother Cities have over their Colonies among the *Grecians*. For, as *Thucydides* says, those Colonies enjoy the same Right of Liberty with the Mother Cities; but they owed a Reverence to their Metropolis, and were obliged to make her τὰ γένη τὰ νομιζόμενα, the Customary Presents, Respect and certain Expressions of Honour.

Livy concerning that Ancient League between the Romans, who had received all the Rights of *Alba*, and of the *Latins* descended from *Alba*: in that League the Roman State was Superior. *Andronicus Rhodius* rightly observes, after *Aristotle*, that in contracting Friendship between those of unequal Power, the most Honour should be paid to the most powerful, and the most Assistance to the weakest. We know what *Proculus* replied to this Question, viz. that that was a free People, who was not subject to the Power of another, tho' it was comprehended in the League, that that Nation shall friendly maintain the Dignity of the other. If then a Nation bound by such a Covenant, remains yet free, and not subjected to the Power of another; it follows, that it yet retains its Sovereignty; and the same may be said of a King. For there is the same Reason for a free People, and a King that is really so. And *Proculus* adds, that such a Clause is inserted in the League, declaring that one Nation is Superior, and not that the other is not free. By Superior we mean not in Power (for he said before, that a free People is not subject to the Power of another) but in Authority and Dignity, which the

the following Words do explain by a proper Similitude. *As we know* (says he) *our Clients to be free, tho' they be not equal to us in Authority, Dignity, nor every Right; so they that are obliged to pay an handſom Reſpect to our Maſteſty, are yet ſuppoſed to be free.*

Clients are under the Protection of their *Patrons*. So a People, who are the *Inferiors* (g) in an Alliance, are under the Protection of the People who are their *Superiors* in Dignity. They are *under their Protection, not under their Dominion*. As *Sylla* ſpeaks in *Appian*, in part, not wholly under Subjection, as *Livy* ſays. And *Cicero* in his ſecond Book of Offices, deſcribing the glorious Days of the *Roman Empire*, ſaid, the *Romans* allow Protection to their Allies, but claim no Dominion: To which agrees that of *Scipio Africanus* the Elder, *The People of Rome had rather oblige Men by Kindneſs, than by Fear, and gain Foreign Nations by Faith and Friendſhip, than ſubject them to hard Bondage*; and what *Strabo* relates of the *Lacedemonians* after the coming of the *Romans* into *Greece*, *they continued free, contributing nothing but Acts of Love and Friendſhip*. As private Protection takes not away Perſonal Liberty, ſo publick Protection does not the Civil, which cannot ſubſiſt without Sovereign Power. Therefore you may ſee *Livy* oppoſes, to be under Protection, and under Jurisdiction.

(g) See Cardinal *Tuſchus*, P. P. Conæ 935. We have an Example in the *Dilimmites*, who being, as *Agathias* relates, B. 3 αὐτονομῶν, living after their own Laws, and perfectly free, ſerved the *Persians* in War. This was the Deſign of the Empreſs *Irene* ſo to divide the Empire among her Huſband's Children, as to make Youngers inferior in Dignity, but Independent, and of full Power. See *Crantzins Saxon* 10. of the Cities who ſubmitted to the Protection of the *Auſtrians*. *Herodian*, B. 5. they were the Friends and Confederates of the *Oſroeni* and *Armenians*, whoſe Subjects theſe were.

on. And *Augustus* threatned *Syllæus* King of the *Arabians* (as *Josephus* relates) if he did not leave off injuring his Neighbours, he would take care that he should be made a Subject of a Friend; which was the Condition of the Kings of *Armenia*, who, as *Petus* writes to *Volgeses*, were under the *Roman* Jurisdiction and consequently more Kings in Name, than Reality; as were also the Kings of *Cyprus*, and some others, formerly Subjects to the *Persian*, ὑποταγέντες, as *Diodorus* calls them.

Here may be objected, what *Proculus* adds, *But some of our Confederate Cities are obnoxious to our Tribunals, and those we condemn we punish.* But to make this more plain, we must know, there are Four kinds of Differences that commonly arise among Confederates. First, if the Subjects of the King or State under Protection, are said to have acted against the League. Secondly, if the King, or the States themselves be accused. Thirdly, If the Associates under the Protection of the same King or State do quarrel among themselves. Fourthly, If Subjects complain of Injuries done by them, under whose Jurisdiction they are.

As to the First, if the Crime may be made out, the King or State are obliged either to punish the Offender, or to deliver him up to the Person injured; which is practicable not only between unequal Confederates, but also equal, and even between such as are not engaged in any League, as we shall shew in another place. He is also obliged to endeavour to have Satisfaction made, which in *Rome* was called the Delegate's Office. And *Gallus Ælius* in *Festus* says, A Recovery is when the Law decides between King and People, Nations and Foreign Cities; how things may be restored by the Assistance of a Judge Delegate, how they may be received, and how private Mens Cases may be prosecuted among

among themselves. But one of the Confederates has no Right directly to seize or punish the Subject of another; therefore *Decius Magius*, a *Capuan*, being made Prisoner by *Hannibal*, and sent to *Cyrene*, and from thence to *Alexandria*, declared, that he was made Prisoner by *Hannibal* contrary to the Articles of the League, and thereupon was set at Liberty.

As to the second; a Confederate hath Power to compel another, to stand to the Articles of his League, and upon refusal to punish him. But this is not also peculiar to an unequal League, but may be done in one which is equal. For it is sufficient, that a Man take Revenge on him that has injured him, provided he is not subject to him; which shall be treated of elsewhere; wherefore this also is practicable among Kings, and People that are not Confederates.

As to the third sort: As in an equal Confederacy, Controversies are generally (*b*) referred to a Convention of the Associates, who are not immediately concerned, as we read the *Greeks*, Ancient *Latins*, and *Germans* used to do, or to the Prince of the League, as to a common Arbitrator: So in an unequal Confederacy, it is commonly agreed that the things in dispute shall be debated before him, who is the Head of the League. Neither does this demonstrate a Superiority of Power; for even Kings themselves will have their Causes tryed before Judges appointed by themselves.

As to the Fourth and last, Associates have no Right of judging: When therefore *Herod* accused his own Sons before *Augustus* of certain Crimes, they replied, *You might have punished us by your own Right,*

(*b*) Such a Convention is called *κοινὸν δίκαιον*, in the old Column *ἰσπολυτείας*, or of the Confederate States of the *Priancians* and *Hieropotamians*.

Right, both as a Father, and as a King. And when Hannibal was accused at Rome by some Carthaginians, Scipio told the (i) Senate, it did not become them to intermeddle in Affairs properly belonging to the City of Carthage. And 'tis in this Aristotle says an Alliance differs from a State, because 'tis the business of Allies to take care that no Injuries be done to them, but not that the Subjects of a Confederate State do not Injure one another.

But this may be objected, that in unequal Leagues the Superior is said to Command, and the Inferior to Obey. But this should not affect us; for this is, when the things concern either the Good of both Parties, or the private Advantage of the Superior in the League. As to things of common Concern, when the Assembly did not sit, even in an equal League, he that was chosen Prince of the League (גִּירָה בְּרִית Dan. xi. 22.) did command the Confederates, as Agamemnon did the Grecian Princes; and afterwards the Lacedemonians did the Grecians, and after them the Athenians. We read in Thucydides's Oration of the Corinthians, *It becomes the Princes of a League to deal justly in private Matters, but more particularly in publick Affairs.* Isocrates commends the Conduct of the ancient Athenians, *Taking care of all, yet letting all enjoy their Liberty.* And in another place, *To Command in War, but not to Tyrannize.* And again, *Managing their Affairs like Confederates, not despotically.* What the Latins call *imperare*, to Command, the Greeks more modestly term, *τάσσειν*, To set in Order. The Athenians having the Conduct of the War against the Persians, as Thucydides expresses it,

(i) See Polybius in his 195th Extract of Legations (or Embassages.)

it, did order which Cities should contribute Money against the Barbarians, and which Ships. So they who were sent from Rome into Greece, are said to be (k) sent to give Orders for the well governing of the free Cities. For if he does this, who is the Prince in an equal League, no wonder then, if the Superior in Dignity, in an unequal League, do the same. Therefore *Imperium*, *Empire* in this Sense, that is *ἡγεμονία*, chief Command, does not take away the Liberty of others. The Rhodians in their Oration to the Roman Senate, extant in *Livy*, thus address'd them, *The Grecians formerly defended their Empire with their own Forces, but where their Empire now is, they wish it may be for ever; they are well pleased to defend their Liberty with your Arms, not being able now to do it with their own.* Thus *Diodorus* tells us, after the taking the *Cadmean* Fort by the *Thebans*, many *Grecian* Cities agreed among themselves, *That every City should be Free, but all under the Conduct of the Athenians.* Yet *Dion Prusæensis*, speaking of those very *Athenians* in the time of *Philip* of *Macedon*, said, *Having at that time lost the Command in War, they only retained their own Liberty.* Thus *Cæsar* calls those People *Confederates*, whom a little before he had said were under the Command of the *Suevians*.

But as to those things, which respect particular Profit, the Requests of the Superior are wont to be reputed Commands, not of Right, but from the likeness of their Effects; as the Intreaties of a King are often call'd Mandates, and the desires of Patients are said to command the Physicians. Before this Consul (*C. Posthumius*) no Body, says *Livy*, B. 42. was ever chargeable, or any ways burdensom to our Confederates, therefore our Magistrates were abundantly supplied with Mules, Tents, and all other Instruments

(k) *Pliny's Epistles* 8. 34.

ments of War, that they should not demand them of our Allies.

In the mean time, it is true, that it often happens, that if he who is Superior in the League, be much more powerful than the rest, he by degrees usurps a Sovereignty over them, especially if the League be perpetual, and that he has a Right to plant Garrisons in their strong Towns, as the *Athenians* did, when they suffered themselves to be appealed to from their Confederates, which the *Lacedemonians* never did. Whereupon *Isocrates* compares the Rule which the *Athenians* exercised over their Confederates to that of Kings. Thus the *Latins* (in *Livy*) complain, that under the Pretence (1) of a Confederacy with the *Romans* they were brought into Servitude. So did the *Ætolians*, that they had nothing left but the bare Shadow, and empty Name of Liberty; and the *Achæans* afterwards, that they had a League in shew, but in reality a precarious Slavery. So in *Tacitus Civilis Batacus* complains of the same *Romans*, That they used them, not as at first, like Confederates, but as mere Slaves; and in another place, They falsely called that Peace, which was indeed a miserable Slavery. *Eumenes* also in *Livy*, said the Confederates of the *Rhodians* were only so in Name, but really their direct Vassals. Also the *Magnesi-ans* (in *Polybius*) complained that *Demetrius* was free

(1) This is what *Plutarch* calls, in the Life of *Aratus*, a Mild Slavery. So *Festus Rufus* in *Tacitus*, Hist. 4. of the *Rhodians*, At first they acted with Liberty, afterwards the *Romans* provoking them they were reduced to a Custom of Obedience. Those whom *Cæsar* had first said to be in the Friendship of the *Ædus*, and Dependants on 'em, he afterwards observes to be under their Command; you may add *Frederick Mindan de Process*, B. 2. cap. 14. n. 3. *Zeigler* and *Landfafs*. num. 86. See *Agathias* B. 1. where the *Goths* are told, what they must in time expect from the *Franks*.

free in shew (m) but in effect all things managed as the Romans pleased; and so the Thessalians were in Appearance free, but in Truth under the Dominion of the Macedonians.

When these things are done, and so done, that in time, by a patient enduring of 'em, they may seem to be rightly done, (of which we shall Discourse more largely in another Place) then either of Confederates they are made Subjects, or certainly there must be a Partition of the Sovereignty, which, as I said before, may happen sometimes.

XXII. But they who pay any thing either by way of Satisfaction for (n) Injuries done, or to get Protection, σύμμαχοι φόρε ἐπιτελεῖς, Tributary Confederates, as it is in Thucydides, such were the (o) Kings of the Hebrews, and of the neighbouring Nations after the time of M. Anthony, ἐν φόβῳ τελευτῶμενοι, free, but under Tribute, as Appian speaks; yet I see no Reason to doubt, but that they had Sovereign Power within their own Dominions,

XXII. of those that pay Tribute.

(m) So also were the Lazi (a People of Scythia) in the times of Justinian. See Procopius. Persic. 2.

(n) The Persians received Money yearly from Justinian, of which see Procopius Persic. 2. and Gothic. 4. that by a soft Name was called a Stipend, or Contribution to defend the Caspian Streights. The Turks pacify the Mountainous Arabians with Money.

(o) Josephus, B. 15. Antony declared, it was not right to call a King to an Account, for what he had done as a King, for at that rate he would not be a King; that it was reasonable, that they who bestowed that Honour upon him, should suffer him to use that Power freely. And St. Chrysostom de Elcemofyna. 2. The Jews, since the decay of their Empire, were subjected to the Will of the Romans, neither did they enjoy full Liberty as before; neither were they, as now, entirely enslaved, but were honoured with the Title of Confederates, paying Tribute to their own Kings, and receiving Governours from them. Besides in most things they used their own Laws, they punished their own Countrymen that transgressed, according to the Custom of the Country.

XXIII. of
those that
hold their
Dominions
by a Feudal
Temure.

minions, though the acknowledging their Weakness takes off something from their Dignity.

XXIII. But the Question that seems more difficult is, when a Prince holds in *Fee*; which yet may be easily answered by what has been said before. For in this Contract, (which is peculiar to the *German* Nation, and no where found, but where they have planted themselves) two things are to be particularly considered. First, The Personal Obligation. Secondly, The Right in the Thing so held.

The Personal Obligation is the same, whether a Man enjoys the very Right of Sovereignty, or any thing else, tho' lying in another place, by Virtue of the *Infeoffment*. But such an Obligation, as it takes not from a private Man the Right of personal Liberty, so neither does it lessen any thing of the Sovereignty in a King, or State, which is Civil Liberty. Which may be plainly seen in Lands called Free-holds; which consist in personal Obligation only, but give no Right in the thing so held. For these are nothing else but a Species of that unequal League, of which we have treated already, wherein one promises Fealty, and the other Safeguard and Protection. But suppose they swear Faith, and Allegiance against all Men, which they now call *Feudum Ligium* (p) (for formerly that word was of a larger Signification) that takes off nothing from the Right of Sovereignty over their own Subjects; not to mention, that in all these Cases, there is a Tacit Condition reserved, that the War be just; of which we shall treat in another Place.

But

(p) See *Baldus* proæmio Digest. *Narram* Confil. 485.

But as to the Right in the thing so held, it may be such, that the very Right of governing, if held in *Fee*, may be lost, either when a Family is extinct, or also for some notorious Crimes; yet in the mean time, the Supremacy ceases not. For, as I have often said, the Thing it self is one thing, and the manner of holding it another. And by this Right I find many Kings constituted by the *Romans*, that upon the failing of the Royal Family it should escheate to themselves, as *Strabo* observes of *Paphlagonia*, and some others.

XXIV. We must also distinguish in Jurisdiction, as well as Property, between the Right it self, and the Exercise of that Right, or between the first Act and the second. For as a King when an Infant, has a Right to govern, but cannot exercise that Right; so has a Madman, and a Prisoner, or one that lives in so foreign a Country, that he is not permitted freely to act for the good of his Empire that is remote from him: for in all such Cases they have their Lieutenants, or Vice-Roys to act for them. Therefore *Demetrius*, (g) living confined under *Seleucus* forbade any Credit to be given to his Letters, or Seal, but ordered that all things should be administred as if he were dead!

XXIV.
A Man's
Right di-
stinguish'd
from the
Exercise of
that Right.

(g) See *Plutarch* in the Life of *Demetrius*.



C H A P. IV.

Of a War made by Subjects against their Superiors.

I. The
Question
raised.

I. **P**RIvate Men may certainly make War against private Men, as a Traveller against a Robber, and Sovereign Princes against Sovereign Princes, as *David* against the King of the *Ammonites*; and so may private Men against Princes, but not their own, as *Abraham* did against the King of *Babylon*, and his Associates. So may Sovereign Princes against private Men, whether their own Subjects, as *David* against *Ishbosheth* and his Party, or Strangers, as the *Romans* against Pirates.

The only Question is, whether private or publick Persons may lawfully make War against those that are set over them, whether as Supreme, or Subordinate. First, it is agreed on all sides, that they that are Commissioned by the higher Powers may make War against their Inferiors, as *Nebe-miah* did by the Authority of *Artaxerxes*, against the neighbouring petty Princes. Thus the *Roman* Emperors allowed the Lord of a Farm to drive away Surveyors, or Quarter-masters. But the main Question is, Whether it be lawful for Subjects to make War against their Sovereign, or those that act by his Authority. This is allowed by all good Men, that if the Prince commands any thing directly contrary to the Law of Nature, or the Commands of God, he is not to be obeyed. For the Apostles, when they alledged, that we must obey God rather than Man, did but appeal to a Principle of Reason, engraved on the Minds of Men, which *Plato* expresses almost in the very same words. But if for this, or any other like Cause, any Injury be done us by the Will of our Sovereign, we ought rather to bear it patiently, than to resist by Force.

II. And all Men have naturally a Right to repel Injuries by Resistance, as we said before. But Civil Society being instituted for the Preservation of Peace, there immediately arises a certain greater Right in the State over us and ours, so far as is necessary for that End. Therefore the State has a Power to prohibit that promiscuous natural Right to resist, for maintaining publick Peace and good Order, which doubtless it does, since otherwise it cannot obtain the End proposed; for if that promiscuous Right of Resistance should be allowed, there would be no longer a State, but a confused Rabble, such as that of the Cyclops, Every one gives Law to his Wife and Children. A Mobb, where (a) all are Speakers, and no Hearers. And the Aborigines, whom Sallust mentions as a wild and Savage People, without Laws, without Government, loose and dissolute. And in another place the Getulians, who had neither Customs, Laws, nor Governor. But Cities (as I said) cannot continue without these. All Human Societies (St. Augustine tells us) unanimously agree to obey Kings. So Æschylus, *τεταχὺς μὲν ἀρχας καὶ ἔχ' ὑπεύθυνον καὶ ἡγετῆν*, A King absolute, accountable to none. And in Sophocles, *ἀρχόντες εἰσιν, ὡς ὁ ὑπακλόν. τί μὴ;* They are Princes, we must obey, why not? And in Euripides, *τὰς τ' ἡγετῶν ἀμαθίας χρεὼν φέρειν*, We must bear with the Follies of Princes. Agreeable where- to is that we quoted above out of Tacitus, The Gods have bestowed a Sovereign Power on Princes, leaving Subjects the glory to obey. And here also Seneca,

II. War against Superiors, as such, is unlawful by the Law of Nature.

N 2

Actions

(a) Valerius says the same of the Bebricii:

Non Fœdera Legum
Ulla colunt, placidas ante Jura tenent Mentes.

They no Laws regard,
Nor Rights observe, that by an Happy Force
Keep All within our Breasts Serene and Quiet.

*Actions of Kings are always Just and Good,
And so by all their Subjects understood.*

And in *Sophocles*, He that is Sovereign, must be obeyed in small, in just, and in contrary things. And likewise in *Sallust*, To do any thing without Punishment, (b) is peculiar to a King.

Hence it is, that the Majesty (that is, the Dignity) of the Sovereign, whether it be King, or State, is fenced with so many Laws, and so many Penalties; which were not reasonable, if it were lawful to resist. If a Soldier resist his Officer that corrects him, if he lays hold on the Cane, he is cashiered; but if he wilfully break it, or strike again, he shall be punished with Death. And in *Aristotle*, If the Officer strikes, he shall not be struck again.

III. By the *Hebrew Law*, he that behaved himself stubbornly, either to the High-Priest, or to the extraordinary Governor appointed by God, was to be put to Death. • But that which in *Samuel* is spoken of the Right of Kings, to him that thoroughly considers it, appears not to be understood of their just Rights, that is, of what they may do honestly and justly, (for a far different way of living is prescribed to a King, in that part of the Law which treats of a King's Duty) nor of barely what he will do; for that would not have been extraordinary in him, when even private Men do like Injuries to private Men; but it is to be understood of such an Action, as has in it the privilege of Right, (c) that is, not to be resisted.

(b) Hitherto refer the words of *M. Antoninus*, which we just quoted out of *Josephus*.

(c) *Philo* upon *Flaccus*. For when were we suspected of a Revolt? When were not we look'd upon by all as Lovers of Peace? But

III. Nor
allowed by
the He-
brew Law.
Jof. 1. 18.
Deut. 17.
12.
1 Sam. 8.
11.
Deut. 17.
14

sifted. Therefore it is added, when People are thus oppressed, they should cry unto God for help, as if no Remedy were to be expected from Man. So whatever he does is called Right, as a Judge is said to do Right, tho' he give an unrighteous Judgment.

IV. Where *Christ* in the New Testament commands to give to *Cæsar* the things that are *Cæsar's*, he certainly intended, that his Disciples should yield as great, if not a greater Obedience (both active and passive) to the higher Powers, than what the *Jews* paid to their Kings. Which *St. Paul* who could best interpret the words of his Lord largely describing the Duties of Subjects, says among other things, *He that resists the Power, resists the Ordinance of God, and they that resist, shall receive unto themselves Damnation. And a little further, for he is the Minister of God to thee for good. And again, Wherefore ye must needs be subject, not only for wrath, but also for conscience sake. He includes in Subjection the Necessity of Non-resistance, not only such as arises from the Apprehension of a worse Evil, but such a one as flows from the Sense of our Duty, whereby we stand oblig'd not only to Man, but to God also: He adds two Reasons for it; First, because God had approved of this Ordinance of Commanding and Obeying, both formerly in the Jewish Law, and now in the Evangelical, wherefore the publick Powers are to be esteemed by us, as ordained by God himself; for we make those Acts our own, which we Support and Countenance by our Authority. Secondly, Because this Ordinance may tend to our Advantage. But some may say, to bear Injuries is not profitable; to which others, more truly, than perti-*

VI. Nor by the Law of the Gospel, as proved by Scripture.

Rom. 13.

N 3

nently

But the very Laws, which we daily observe, are they not blameless, do they not conduce to the Peace, and Good of the State?

nently to the Apostle's Meaning, as I suppose, say, these Injuries are also profitable to us, because such a Patience is to our Advantage, for that Patience of ours shall not lose, will not want its Reward. The Apostle seems to me to have regarded the universal End proposed in this Ordinance, which is the (d) publick Peace, wherein is comprehended that also of every particular Person. And certainly these are the Benefits, which we receive from the Sovereign Powers; For no body ever wisht ill to himself, and the Happiness of the Prince consists in the Happiness of his Subjects (e), *sint quibus imperes, Leave some to reign over*, said one to Sylla. The Hebrews have a Proverb, *If there were no Sovereign Power, we should swallow up one another alive*. To which agrees that of St. Chrysostom, *Take away the Governors of States, Men would be more Savage than irrational Brutes, not only biting (f) but devouring one another*.

Tho' the Supreme Magistrate may sometimes, through Fear, Anger, or some other Passion deviate from the Ordinary Path of Justice and Equity, this happening but seldom should be passed over, and (as Tacitus observes) is made up by many good Offices. 'Tis enough for the Laws to take Notice of that which generally happens, as Theophrastus

(d) Well said St. Chrysostom. Συμπαράγωνός σου, *He's your Fellow-Labour, he Works with you*; meaning the Prince with the Preacher of the Gospel. *He Planes what you saw*.

(e) Plutarch, Florus and others tell us. this was a Saying of Sylla's, whence St. Austin took it, B. 3. cap. 28. de Civitate Dei.

(f) This is in the 6th de Statuis, and also this, *Take away the Tribunals, and you will take away all the Peace of Life*. And again, *Do not tell me of those who have made an ill Use of Honours, but behold the Beauty of its Institution, and you will admire the Wisdom of him who was the first Author of it*. And the same on the Romans, *If you take away the Magistrates, all will perish, Cities will not continue, not Fields nor the Forum, nor any thing else, all will be overturned, and the weak will become a Prey to the stronger*. He has the same Sense upon the Ephesians, 5.

thus said, and to which we may apply that of Cato, No Law can serve every particular Person, it is enough, if it be beneficial to the greater part, and in the greatest Cases. But as to such Cases, which rarely happen, they are understood to be restrained by general Rules. For tho' the Reason of the Law, being particularly applyed to that special Case, does not prevail, yet in the General, under which Specials may lawfully be comprehended, it may hold. And that is much better, than to live without Law, or to allow every Man to be a Law to himself. Seneca speaks pertinently to this purpose. It is better not to admit of an Excuse, tho' just, from a few, than that all should be allowed to make what Excuse they please.

Here we shall cite that remarkable Saying of Pericles (g) in Thucydides. *I esteem it better for private Men, that the State generally flourish, tho' they themselves do not thrive in it, than that they should flourish in their private Estates, and the Publick suffer. For let a Man's private Affairs be never so prosperous, yet if his Country be lost, he must perish with it. On the contrary, if the State flourish, every private Man's Estate, tho' at present small, may in time be encreased. Wherefore since the State can easily support any private Man's Misfortunes, but that of a private Man cannot so recover the State, why do ye not rather do your utmost to advance the Publick, than (as ye now do) seek to build your private Fortunes, upon the Ruin of the Publick? which Livy speaks in short, If the Commonwealth flourish, it secures every Man's private Estate, but by betraying the Publick, you will never*

N 4

ver

(g) R. 2. with whom agrees that of St. Ambrose, B. 3. *de Officiis*. The Interest of the Publick is that of every particular Person. And that in the Law: That is not always to be regarded, which tends to the Interest of one Associate, but that which is beneficial to the general Confederacy. L. *Actiones*. § *Labes D. pra Scto. add. L. Onicam*. § *penul. C. de Caducis tollendis*.

ver preserve your own. And Plato observed, τὸ κοινὸν σπουδαίει, &c. For what is common, strengthens a City, but what advances the Interest of private Families, destroys it; therefore it nearly concerns both Prince, and Subject to prefer the good of the State, to their own private Interest. And Xenophon observes, οἷον ἐν πολέμῳ, &c. He that Mutinies against his General in War, offends against his own Safety. And Jambliebus, Private Interest is inseparable from the Publick; each particular Advantage is included in the Publick; for as in the natural Body, so assuredly in the Civil, the Benefit of each Part consists in the Safety of the whole.

But without doubt among those things that are publick, the Principal is that good Order (which I mentioned) of commanding and obeying, which cannot consist with the private Subjects assuming the License to resist (the publick Magistrate). I shall explain this out of an excellent Place in Dion Cassius, ὅτι πρὸς τοῖς ἡγετοῖς, &c. I think it neither decent for a Prince to submit to his Subjects, nor is there any prospect of Safety, where the Governed should pretend to Command. Do but consider what a strange Disorder it would cause in a Family, if Children should be allowed to despise their Parents, and what in the Schools, if Scholars should slight their Masters; what Health for Patients that will not be ruled by their Physicians? Or what Security for Sailors, if the Seamen will not obey their Officers? for Nature has made it necessary, that for the Preservation of Mankind, some should Command, and some should Obey.

To the Testimony of St. Paul, we shall add
 1 Ep. 2. 17. that of St. Peter, whose words are these, Honour
 18, 19, 20. the King; Servants be subject to your Masters with all fear, not only to the good and gentle, but also to the froward; for this is thank-worthy if a Man for Conscience toward God endure grief, suffering wrongfully. For what glory is it, if when ye be buffeted for your faults, ye shall take it patiently? but if when

when ye do well, and suffer for it, ye take it patiently, this is (b) acceptable with God. He immediately confirms this by the Example of Christ. And Clement in his Constitutions, expresses the same Sense in these words, *ο ΑΝΘΡΩΠΟΥ, &c. Let the Servant faithfully serve his Master with the fear of God, tho' he be wicked and unjust.* Here we may observe two things. First, whereas it is said, that Servants owe Subjection, even to hard Masters; therein is implied that of Subjects to Kings. For that which follows, being built upon the same Foundation, respects the Duty of Subjects as well as of Servants; and therefore requires such an Obedience from us, as to bear Injuries with Patience, as 'tis usually said of Parents, *Love your Parent if he is just; (i) if not, bear with him.* A young Man of Eretria, who had been long a Disciple to Zeno, being asked, what he had learnt, answered, *οπισθεν πατερως φερετω, To bear my Father's Anger.* And Justin says of *Lyfimachus*, *He took the Reproaches of his King as patiently, as if he had been his Father.* And in *Livy*, *As the Cruelty of our Parents, so also that of our Country, is to be softened by patient Suffering.* So in *Tacitus*, *The Humours of Kings must be borne.* And in another place, *Good Emperors are to be desired, but whatsoever they are, they must be obeyed.* For which *Claudian* commends the *Persians*, who obeyed their Kings equally, tho' some were cruel.

V. Neither

(b) *Tertullian* of Repentance; The Fear of Man is the Honour of God.

(i) *Terence Hecyra*, For Piety commands me, O *Parmeno*, to bear the Injuries of my Mother. *Cicero pro Cluentio*, Men ought not only to conceal the Faults of their Parents, but to bear them patiently. *St. Chrysostom* has some fine things relating to this Precept; as well on the Epistle to *Timothy*, as B. 5. against the *Jews*. To this may be referred, what *Epiphanius*, and from him *Simplicius*, have de duabus Ansis.

V. And
by the Pra-
lice of the
Primitive
Christians.

V. (k) Neither did the Practice of the Primitive Christians, the best Interpreter of the Law, deviate from this Law of God. For though the Roman Emperors were sometimes the very worst of Men, and that there wanted not those, who, under the pretence of freeing the State from Tyranny, took up Arms against them, yet the Christians could never be perswaded to join with them. In the Constitutions of Clement we have βασιλεια & θεουσλοβειαν σααδς, *It is not lawful to resist the King's Authority.* And Tertullian says in his Apology, *Whence are your Cassius's, your Nigers, and your Albinus's? Whence those who besiege Cæsar between the two Lawrels? Whence those who Wrestle with him, only for an Opportunity of Throttling him? Whence those who Force the Palace Sword in hand, Fellows bolder than so many* (l) Sigerius's (so the Manuscript in the Hands of those accomplish'd worthy Gentlemen Mr. du Puys expressly has it) and Parthenius's? If I am not mistaken from among the Romans, that is, from among those who are not Christians. What he says of the Wrestling relates to Commodus's Murder committed by a Wrestler, by the Order of the Præfect *Ælius Lætus*; but there never was a wickedder Wretch living than that Emperor.

(k) To which relates the 18th Canon of the Council of Chalcedon, repeated in the 4th Canon of the Council in Trullo, the 4th Council of Toledo. Cap. 2. *Charles the Bald* in the City of Collem. The Synod of Soissons Canon 5.

(l) Xiphilinus in his Life of Domitian, ἐπέδερτο ὃ αὐτῷ καὶ συνεκνεύσαντο τὴν πρᾶξιν Παρθένιος ὁ πρόκοιτος αὐτοῦ καὶ Σίγριος (by mistake Σίγνης) ἐν τῇ προκοιτίᾳ καὶ αὐθιγῶν. But Parthenius a Gentleman of his Bed-Chamber, and Sigerius, another of the Bed-Chamber too, made a Conspiracy and Assassinated him. Martial, B. iv.

Sigeriósque Meros, Partheniósque Sonas.

Sigerius and Parthenius is all your Talk.

This Name was not only corrupted in Tertullian, but is still so in Suetonius, where *Saturius*; and in *Victor vulgaris*, where it is read *Casperius*.

peror. *Parthenius*, whose Fact also *Tertullian* mentions here with Horror, was he who killed that worst of Emperors *Domitian*. To these he compares *Plautian* the Knight-Marshal, who would have slain the Bloody Emperor *Septimius Severus* in his own Palace. *Piscennius Niger* in Syria, and *Clodius Albinus* in Gaul and Britain, took up Arms against this *Septimius Severus*, as if out of Zeal and Affection to the Commonwealth. But their Proceedings too were displeasing to the *Christians*, as *Tertullian* glories in his Treatise to *Scapula*: We are reproacht with Treason; but never could *Christians* be found to act the *Albinians*, or *Nigrians*, or *Cassians*. Those *Cassians* were they who followed *Avidius Cassius*, a Man of great Note, who took Arms, under a Pretence of going to restore the Common-wealth, which the Negligence of *M. Antonin* was like to Ruin.

When *St. Ambrose* had received an Injury from the Emperor *Valentinian* the Son of *Valentinian*, which he resented as not only done to himself, but to his Flock, and even to Christ, he would not take the Advantage of the People's Inclination to resist; but said, (m) *Tho' compelled, I cannot resist; I can grieve, weep, and mourn. Against Arms, Soldiers and Goths, I have no other Arms but Tears, for these are the Defences of a Priest, in any other manner I neither ought nor can resist.* And presently after, *I was commanded to appease the Tumult, I answered, it was in my Power not to stir them up, but that it was only in the Power of God to quiet them.* The same *St. Ambrose* would not make use of the Forces of

(m) *Gratian* has inserted it in Cause 23. Quest. 8. the same *St. Ambrose* Epist. 33. Will ye drag me in Chains? I am willing, I will not fortifie my self with the People round me. *Gregory* the Great imitated him. B. 6. Epist. 1. If I would have joined in the Death of the *Lombards*, to this Day the Nation of the *Lombards* would have had neither King, nor Captains, nor Counts, and had been divided with the greatest Confusion.

of *Maximus* against the same Emperor, tho' an *Arrian*, and a great Persecutor of the Church. Thus *Gregory Nazianzen* relates, that *Julian* the Apostate was diverted from bloody Designs (against the Church) by the Tears of the *Christians*, adding, *this was the best Security against Persecution*. Yet his Army was almost all *Christians*. Besides, as the same *Nazianzen* observes, that Cruelty of *Julian* would not only have been injurious to the *Christians*, but would have exposed the State to the utmost danger: To which we shall add that of *St. Augustine*, where he expounds those words of *St. Paul* to the *Romans*, for the Security of our own Lives we ought to submit to the Sovereign Powers, and not resist if they should take any thing from us.

VI. Inferior Magistrates to make War against the Sovereign unlawful, proved by Reason and Scripture.

VI. There are some very Learned Men in this Age, who, Suiting themselves to Times, and Places, first (as I think) perswade themselves, and then others, that what we have already said (in relation to Non-resistance) is consistent with private Men, but (n) not with Inferior Magistrates, who they think have Right to resist the Injuries of their Sovereign; nay, and that they Sin if they do not do it; which Opinion is not to be admitted. For as in Logicks there (a) is a middle Species, which with respect to the Genus is still a Species, but in respect of the Species below it, a Genus: So those Magistrates, in respect to their Inferiors, are publick Persons, but in respect to their Superiors, are but private Subjects. For as all Power of governing is derived from the Sovereign, and so is subject to it; so whatever is done by Inferior Magistrates against the Will of the Sovereign, is void, and reputed as a private Act. Philosophers say, that all Order necessarily relates to some Principal; but

(n) *Peter Martyr* on Judges 3. *Paras* on the 12th to the *Romans*, *Junius Brutus*, *Daneus*, B. 6. *Politic*, and others.

(a) The special kind in the 58th Epistle of *Seneca*.

but they, who think otherwise, seem to me to introduce such a State of things as the Ancients fabled to have been in Heaven before the Institution of Majesty, when the lesser Gods did not submit to Jupiter. But that Order which I have spoken of, and (p) ὑπαλληλισμός, *Subordination*, is not only apprehended by common Sense, whence 'tis said, *Every Kingdom is under a higher Kingdom*; and that of *Papinius*, *All things are Ruled and Rule alternately*: (q) And that remarkable Saying of St. *Augustine's*, *Observe the very degrees of Human things*; if thy *Guardian* should command any thing, it must be done; but not if the *Proconsul* commands the contrary; or if the *Consul* orders one thing, and the *Emperor* another; you do not here despise the *Authority*; but you only abuse to obey the highest: So neither ought the lesser to be offended, that the greater is preferred before him; and the same Father says of *Pilate*, because God had given him such a Power as was subordinate to *Cæsar's*.

And this is also proved by Divine Authority; for St. *Peter* bids us be subject to the King, otherwise than to Magistrates; to the King as Supreme, that is without Exception, but only to those things which God directly commands, who approves, and not forbids, our bearing of an Injury. But to Magistrates as deputed by the King, that is deriving their Authority from him. And when St. *Paul* would have every Soul be subject to the higher Powers, he also included inferior Magistrates. Neither do we find among the *Hebrews*, where there were so many Kings regardless of the Laws of

(p) So in a Family the Master is Chief, the Mistress next, after that the Children, then the Ordinary Servants, and after them the under Servants. See St. *Chrysostom* upon the 1st to the *Corinth.*

13. 3.

(q) St. *Austin* has almost the very same in his Sermon 6. upon the Words of our Lord,

of both God and Man, that any inferior Magistrates, among whom there were doubtless some Pious and Valiant, did so far take upon them, as to assume it as a Right to resist their Kings by Force, unless they had a special Commission from God, who alone has the Sovereign Power over them; but on the contrary, what the Duty of inferior Magistrates is to their King, *Samuel* instructs us, who before the Elders and the People gave to *Saul*, tho' now governing perversely, the usual Reverence.

And so likewise the State of publick Religion always depended upon the Authority of the King, and the *Sanhedrim*: For whereas, after the King, the Magistrates, together with the People, promised they would be faithful to God; that ought to be understood, so far as it should be in the Power of every one of them. Nay, the very Images of their false Gods, which were publickly set up, were never thrown down, as we read, but at the special Command of the People, when it was a Republick; or of the King, when the Government was Regal. And whereas the Scriptures mention Violence sometimes offered to their Kings, it is not to justify the Fact, but to shew the Equity of Divine Providence in permitting it.

Those of the contrary Opinion often urge that Saying of the Emperor *Trajan*, who delivering a Sword to a Captain of the *Prætorian* Band, said, *Use this for me, if I govern well; and against me, if ill.* We must know, that *Trajan* (as appears by *Pliny's* Panegyrick) took particular Care not to assume Regal Power, but rather (r) to behave himself like a true Prince, willing to submit to the Judgment of the *Senate* and *People*, whose Decrees he would have

(r) Which afterwards *Pertinax* and *Macrinus* imitated. Whose excellent Orations see in *Herodotus*.

have that Captain to execute, even against the Prince himself: The like we read of *M. Antoninus*, who would not touch the Publick Treasury without the Consent of the Senate.

VII. A more difficult Question is, whether the Law of Non-Resistance obliges us in the most Extreme and Inevitable Danger. For some of the Laws of God, tho' pronounced absolutely, seem to admit of *tacit* Exceptions in cases of extreme Necessity; for so it was determined by their wisest *Rabbies* concerning the Law of their Sabbath in the time of the *Maccabees*; whence arose the famous Saying, *The danger of Life drives away the Sabbath*. And the *Jew* in *Synesius* gives this Reason for the breach of the Law of the Sabbath, (f) *σαφὲς ὑπὲρ ψυχῆς θέομεν, we were in manifest danger of our Lives*. Which Exception is approved of by Christ himself; as also in that Law of not eating the *Shew Bread*. And the *Hebrew Rabbins* rightly add the same Exception to their Laws concerning forbidden Meats, and some others of Ancient Tradition. Not that it was not just for God to have obliged us even unto certain Death; but that some of his Laws are of such a Nature as cannot be easily believed to have been given in so rigid a manner, which in human Laws goes farther yet.

VII. What is to be done in case of extreme and inevitable Necessity.

Mat. 12. 4.

1 Sam. 23. 6.

I do not deny, but that some Acts of Virtue may by a Human Law be commanded, tho' under the evident Hazard of Death. As for a Soldier not to quit (r) his Post;

(f) *Maccabees*, B. 1. Chap. 9. 10. 43 and 44. When *Bacchides* heard this, he came with a great Army to the Banks of *Jordan* on the Sabbath Day. But *Jonathan* said to his Men. let us now rise and fight for our Lives, for we are not in the same Condition as yesterday and the Day before.

(r) See *Josephus*, where he speaks of the Keepers of *Saul*, and *Polybius* πὰρ Ῥωμαίους, &c. Amongst the Romans he who quitted the Guard was punish'd with Death.

Post; neither is this to be rashly understood to have been the Will of the Law-maker, neither do Men assume so much Right over themselves, or others, but when, and as far as extream Necessity requires it. For all Human Laws are, and ought to be so enacted, as that there should be some Allowance for Human Frailty. But this Law (of which we now treat) seems to depend upon the Intention of those who first entred into Civil Society, from whom the Right is derived to the Persons governing. But if they had been asked, whether they would have imposed such a Condition on all Mankind, as Death it self, rather than in any case by Force to repel the Insults of their Superiors, I much doubt whether they would say they did design it; unless with this Caution, that such Resistance could not be made without great Disturbance in the State, or the Destruction of many Innocents. For what Charity recommends in such a Case to be done, may, I doubt not, pass for a Human Law.

Some may say, that this severe Obligation to die, rather than at any time to resist an Injury offered by Superiors, is not imposed by any Human, but the Divine Law. But we must observe, that Men did not at first unite themselves in Civil Society by any Special Command from God, but of their own Free Will, out of a Sense of the Inability of separate Families to repel Violence, whence the Civil Power is derived; which therefore St. Peter calls a Human Ordinance, tho' elsewhere it is called a Divine Ordinance, because God approved of this wholsom Institution of Men. But God, in approving a human Law, may be thought to approve of it as a Human Law, and after a Human Manner. Barclay (the stoutest Assertor of Regal Power) does thus far allow, that the People, or the Nobler part of them,

them, have a Right to defend themselves against cruel Tyranny; and yet owns that the whole Body of the People is subject to the King. I easily understand, that of the greater Value the thing is which we desire to secure by Law, the more express that Law should be, and the fewer Exceptions from it. Yet I dare not indifferently condemn either every private War, or every, tho' lesser part of the People, who as their last Shift, in Cases of extreme Necessity, have defended themselves by Arms, yet with Deference to the common Good. For *David*, who (bating some particular Facts) was so famed for living so exactly according to Law, did yet entertain about him first 400, and afterwards more armed Men, and to what end did he so, unless for the Defence of his own Person, but we must also observe this, that *David* did not do this, till he was assured by *Jonathan*, and many other infallible Proofs, that *Saul* really sought his Life: But then he neither seized on any City, nor sought Occasions of fighting, but lurked about sometimes in by-Places, sometimes among foreign Nations, with this Resolution, to avoid all Occasions of injuring his own Countrymen. The Fact of the *Maccabees* may seem like this; for whereas some pretend to defend the Wars of the *Maccabees* upon this Plea, that *Antiochus* was not a King, but an Usurper, which is groundless; for throughout the whole History of the *Maccabees*, *Antiochus* is always call'd by the Name of King, even by their own Party, and with Reason, for the *Hebrews* had long before submitted to the *Macedonian* Empire, in whose Right *Antiochus* succeeded. For whereas the *Jewish* Law forbids a Stranger to be set over them, that is to be understood of a voluntary Election, and not of one, whom the People through the Necessity of the Times shall be forced to admit. And again, where-

as others say, that the *Maccabees* acted by the People's Right, to whom belonged *αὐτονομία*, the governing of themselves by their own Laws; neither is this certain. For the *Jews* being first subdued by *Nebuchadnezzar*, were by the Right of War subjected to him, and afterwards by the same Right to the Successors of the *Chaldeans*, the *Medes* and *Persians*, whose whole (u) Empire devolved upon the *Macedonians*. Hence the *Jews* are called by *Tacitus*, the most servil of the Nations of the East, as subject to the Assyrian, Mede and Persian. Neither did they obtain any Condition from *Alexander* or his Successors, but without any Terms submitted to them, as they had before done to *Darius*. And tho' they were sometimes allowed to use their own Rites, and publickly to exercise their own Laws, this was only a precarious Right granted by the favour of the King, not by any Law that was added to the Empire. There is nothing then, that could justify the *Maccabees* (in taking up Arms) but extreme Necessity, which might do it, so long as they kept within the bounds of Self-Preservation, and like *David*, retired to secret Places, for Security; nor using their Arms, unless first assaulted.

In the mean time we must take care, that even in this extreme Danger, we spare the Person of the King; for they who suppose this Behaviour of *David* towards *Saul*, proceeded not so much from the necessity of Duty, as from some deeper

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(u) *Justin*, B. 36. *Xerxes* King of the *Persians* first subdued the *Jews*, afterwards together with the *Persians* they came under the Power of *Alexander* the Great, and were a great while under the Jurisdiction of the *Macedonians*. When they revolted from *Demetrius*, courting the Friendship of the *Romans*; they first of all the *Eastern Nations* obtained their Liberty, the *Romans* then readily granting what was anothers.

Consideration, are mistaken: For *David* himself openly declared, that no Man could be innocent, 1 Sam. 26.
that stretched forth his hand against the Lord's 9.

Anointed. For he knew it was written in the Law, *Thou shalt not revile the Gods*, that is, the Supreme Judges. *Thou shalt not* (x) *curse the Rulers of thy People*. In which Law special mention being made of the Supreme Power, it plainly shews that some special Duty is required. Wherefore *Optatus Milevitanus* speaking of this Fact of *David*, says, *God's special Command, coming fresh into his Memory, restrained him.* (y) And makes *David* say, *I would willingly overcome my Enemy, but I must not disobey the Commands of God.* Deu. 17. 18.

To slander any private Person falsely is not Lawful, but of a King we must not speak Evil, tho' it be true. Because, as the Writer of the Problems (fathered upon *Aristotle*) says, *ὁ κακὸν ποῶν, &c. He that speaks evil of the Governour, (z) reproaches the City.* But if we must not speak Evil of him, much less must we do Evil against him. *David* was struck with Remorse, for having cut off a piece of *Saul's* Garment: So great a Reverence did he bear to his Person! and deservedly; for since the Sovereign Power cannot but expose them (a) to the Hatred of many, their Security should

O 2

be

(x) *Joab* of *Siméi* in *Josephus*: Shalt not thou be put to Death, who durst curse him whom God has placed on the Throne?

(y) *Josephus* of *David*: But presently repenting, he said it was a wicked Action to kill his Sovereign Lord. And afterwards, It is a horrid thing to kill a King tho' he be wicked; for a Punishment attends him from Him who ordained the King, (*viz.* God.)

(z) *Julian Misopog.* For the Laws are severe in the behalf of Princes; so that he who injures a Prince, has wilfully trod the Laws under Foot.

(a) *Quintilian Declamat.* 348: That this is the condition of all those who invade the Government of the State, that they are forced, with a certain Regret of themselves, to perform what

con-

be particularly provided for. Which the *Romans* did for the *Tribunes* of the People, that they should be ἀσυλτοι, *Inviolable*. Among the Sayings of the *Essenes*, this was one, Kings are to be accounted Sacred: And that famous Passage in *Homer*,

Περὶ γὰρ δὲ ποιμένι λαῶν,
Μὴ τι πᾶδοι.

(b) *In Fear and Apprehension for the Prince
Lest any thing should hurt him.*

Nor without Reason, as it is in *Curtius*, the very Name of a King, was even adored by their Subjects: So *Artaban* the Persian, (c) Among many excellent Laws we have, this seems to be the best, which commands us to Honour and adore our Kings, as the Image of God, who is the Saviour of all. And in *Plutarch* of *Agis*, ὃ δὲ δεινὸν ἐστὶ νενόμεσθαι βασιλέως, &c. It is not permitted by the Laws of God, or Man, to offer Violence to the Person of a King.

But here is a more difficult Question, whether what was Lawful for *David* and the *Maccabees*, may be

contributes to the publick Safety. See these words about the Affair of *Livia* to *Augustus*, in *Xiphilinus* out of *Dion*.

(b) *St. Chrysostom* says rightly, 1 *Tim.* i. If any one kill a Sheep, he lessens the Flock; but if any one slay the Shepherd, he thereby scatters the whole Flock, *Seneca*, B. 1. of Clemency, Cap. 3. They guard his Sleep by Night Watches, being at Hand, and surrounding him, they defend his Person, and expose themselves to all Dangers that may threaten him. The Nations, and the Cities have not thus generally agreed without good Reason to defend and love their Kings, and to hazard themselves, and all they have, where their Sovereign's Safety requires it. Neither is it an undervaluing of themselves, or a Madness for so many thousands to rush upon the Sword to save one single Life, and by the Death of many to save the Life of one, sometimes old and infirm. As the whole Body serves the Mind (which he there largely expresses) so this great multitude of one Soul encompassed, is governed by his Spirit, is bowed by his Reason, and would destroy and ruin themselves by their own Strength, if they were not supported by his Direction and Advice. Thus they love their own Safety, &c. And further B. 2. Cap. 1. § 9.

(c) *In Plutarch's Life of Themistocles.*

be also Lawful for us *Christians*, whose Lord and Master, *Christ*, so often bidding us take up our Cross, seems to require from us a greater Measure of Patience. Surely where our Superiors threaten us with Death for our Religion, *Christ* grants leave to flee, especially to those whom the necessary Duties of their Calling tie to no particular Place: he allows nothing beyond Flight. But St. *Peter* tells us, *That Christ in suffering left us an Example, that we should follow his Steps, who knew no sin, neither was guilt found in his Mouth; who being reviled, reviled not again, when he suffered, he threatened not, but remitted his Cause to him, that judgeth righteously.* Nay he bids us *Christians* give Thanks to God, and rejoice, when we suffer Persecution for our Religion. And we may read how mightily *Christianity* prevailed by this Virtue of Patience.

Wherefore, I think that the Primitive Christians, who, living nearest the Times of the Apostles, and of Apostolical Men, better and more fully both understood and practis'd the Discipline prescrib'd by 'em, are very much injured by those who suppose that they rather wanted Power than Will to defend themselves in imminent Danger of Death. Indeed *Tertullian* would have been very imprudent, nay, impudent, to have so confidently affirmed a Falshood, to the Emperors, who could not be ignorant of it, writing thus, *If we had a mind to act as publick Enemies, or to take a private Revenge, could we want either numbers of Men, or Stores of Provision? Are the Moors, Germans, Parthians, or People of one Nation, and their Borderers, more than those of the whole World? We are Strangers, but yet fill all Places in your Dominions, your Cities, Islands, Castles, Free Towns, Assemblies, your very Camps, Tribes, Wards, Palace, Senate, and Courts of Judicature, we only leave you your Temples. For what War have we not been fit and ready, tho' unequal in*
O 3 *Numbers?*

Numbers? How come we to be so freely killed, but that we are taught by our Religion, that it is better to be killed, than to kill? Also Cyprian follows his Master, and thus declares; Hence it is, that none of us, being apprehended, make Resistance, nor revenge ourselves for Injuries unjustly done to us, tho' we are more Numerous and Powerful; it was the Confidence that Divine Vengeance would fall on our Persecutors, which made us Patient. Thus the Innocent yield to the (d) Guilty. And Lactantius, For we confide in the Majesty of God, who is able as well to Revenge the Contempt of himself, as the Hardships and Injuries done to his Servants. Wherefore we suffer inexpressible Miseries, and do not repine, but refer the avenging of 'em to the Almighty. The same we meet with in St. Augustine, A righteous Man should chiefly think of nothing in these Cases, unless, when he begins a War, whom he may lawfully fight against; for it is not lawful for him to fight against all Persons. And again, When Princes Err, they presently make Laws to defend their Errors from Truth, by which the Righteous are tryed, and crowned (with Martyrdom). And again, So are Sovereigns to be endured by their Subjects, and Masters by their Servants, as that by suffering these Temporal Things with Patience and Resignation, they may have just Reason to hope for Rewards that are Eternal. Which he further Illustrates by the Example of the Primitive Christians. Neither did the Citizens of Christ (tho' they sojourned upon Earth, and had vast Numbers of People

(d) These Words are, in what he writes to Demetrian. And in the 1st Epistle of his 1st B. He (the Enemy) understood that the Soldiers of Christ were vigilant. that being sober and in Arms, they would stand to the Battle, vanquish'd they could not be. die indeed they could; and in this very Thing are they invincible, because they neither fear Death, nor do they oppose those that assault 'em. since 'tis not Lawful for 'em tho' Innocent to kill the Offender, but with Readiness do they part with their Lives and their Blood.

ple to assist them against their wicked Persecutors,) fight for Temporal Safety, but rather made no Resistance, that they might obtain an Eternal one. They were bound, imprisoned, beaten, tormented, burnt, flayed, killed, and quartered, and yet they encreased; they did not think it their Interest to fight to preserve this Life, but despised it, for a better.

Nor are the Observations of St. Cyril less admirable, upon that Passage in St. John of St. Peter's Sword. The *Thebean Legion* (we read) consisted of 6666 Soldiers, and all Christians. Who, when the Emperor *Maximianus* would have compelled the whole Army to Sacrifice to Idols, at *Oëtodurum*, first removed to St. *Maurice*; and when the Emperor had sent one thither, to command 'em to come and Sacrifice, and they had refus'd to do it; he sent Officers to put every tenth Man to Death, who easily fullfill'd his Command, no Man offering to Resist.

(e) *Mauritius* then Commander in Chief of that Legion (from whom the Town of *Aganum* in Switzerland, was afterwards called St. *Maurice*) as *Eucherius* Bishop of *Lions* records, thus spake to his Soldiers at that time. *How did I fear, lest any of you, under the show of Self-defence (as it is easie for armed Men to do) should have endeavoured by Force to prevent their blessed Martyrdoms? for then I had been fully instructed by Christ's own Example to have forbid it, who expressly commanded the Apostle to put*

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the

(e) Of the Honours of this Martyr among the *Switz*. see *Guilleman* in an ancient Writing of the Translation of St. *Justin* into new *Corbesja*. Whence we gather that according to the Chronicles, he suffered in that most Bloody and unparallelled tenth Persecution after *Nero*; which was also more cruel than the former Persecutions, whilst it sent to Heaven a venerable multitude of Martyrs, the Chiefest among whom was the Company of St. *Mauritius*, the Mirror of Innocence. See *Crantzius Saxon*. 7. 16. of the *Thebean Martyrs* translated to *Brunswick*.

the Sword into the Scabbard, which he had drawn in his Master's own Defence; teaching us that the Christian Faith is more Powerful than all other Arms, lest any one should oppose an Immortal Work, with Mortal Hands, but rather compleat the Faith of the Act begun, with new and continual Proofs of the Religion he has embraced. When (this Execution being over) the Emperor commanded the same thing to the Survivors, as he had before done to the others, they all unanimously answer'd, Indeed, Cæsar, we are your Soldiers, and we took up Arms in Defence of the Roman Empire, nor did we ever Desert in War, or Betray our Commissions, or ever merit the Reproach of Cowards: We have always obeyed your Commands, except, as instructed by the Laws of Christianity, we have refused to worship Devils, or approach Altars always defiled with Blood. We find you have resolved, either to defile us Christians with Sacrileges, or to affright us by putting every tenth Man to Death. You need not enquire farther after any that desire to be concealed, know that we are all of us Christians, you shall have all our Bodies subject to your Power, but you cannot command our Souls, which are subject only to Christ our Redeemer.

Then Exuperius, Standard Bearer to that Legion, thus address'd them. You see me (Brave Fellow-Soldiers) carry the Standard in secular Wars. But it is not to those Arms I now invite you, it is not to those Wars that I now raise your Courage and Valour, you are now to practise another kind of Warfare, you cannot hasten by these Swords to Heaven. And then he sent this Message to the Emperor, Against thee, O Cæsar, not Desperation it self, which is most bold in Dangers, can make us take up Arms, (f) behold

(f) Like to these are those words of the Alexandrian Jews to Flaccus, We are without Arms, as you see, and yet there are some that

bold we have our Arms, but do not resist, because we rather chuse thus to die, than overcome, and to fall Innocents, rather than to live Criminals. And again, We throw away our Weapons, your Executioner shall find our Hands disarmed, but our Breasts fortified with Christian Faith.

After this followed the Massacre of the whole Legion, of which *Eucherius* gives this account. *Neither did their Innocence, or Numbers, exempt them from Death, whereas a Multitude often escaped Punishment for a Crime. We have the same account of it in the old Martyrology. They were every where killed with Swords, yet did not cry out, but laying down their Arms, exposed their naked Breasts to their Persecutors, neither their Numbers, nor War-like Experience could perswade them to assert the Justice of their Cause by their Swords, but only proposing to imitate his Example, who was led dumb to the Slaughter, and as a Lamb did not open his Mouth, they also like the Innocent flock of Christ's sheep, suffered themselves to be torn in Pieces by Persecuting Wolves.*

(g) And when the Emperor *Valens* wickedly and cruelly persecuted those Christians, who according to the Holy Scriptures, and the Traditions of the Fathers, professed Christ to be *ὁμοούσιον*, of the same Substance, though they were in great Multitudes, they never defended themselves by Arms. Certainly where Patience is recommended to us, there we find Christ's own Example proposed

that accuse us as publick Enemies; we even turn those which Nature has given us for our Defence behind us, where they can do nothing: we freely offer our naked Bodies to the Violence of those that would Murder us.

(g) See the Extracts of *Johannes Antiochenus*, out of the Manuscript of that Man most worthy of Eternal Memory, *Nicolaus Peirescius*.

posed to us (as we read it was to the *Theban Legion*) for our Imitation; whose Patience reached even unto Death. And he that loseth his Life is truly said by Christ to find it. Thus having proved, that those who are invested with the Sovereign Power, cannot lawfully be resisted; now we ought to admonish the Reader of some things, lest he should think those Men transgress this Law, who really do not.

VIII. A
Free People
may make
War against
their Prince.

VIII. First therefore, Those Princes who are under the People, whether they at first received such a Power, or it was afterwards made so by Agreement, (b) as in *Sparta*, if they offend against the Laws, or the People, they may not only be resisted by Force; but if it be necessary, may be punished by Death, as it befel *Pausanias* the *Spartan King*. Now seeing there were in *Italy* several such Kingdoms, it is no wonder, if *Virgil* having related so many wicked Acts done by *Mezentius*, adds,

By Just (i) Revenge the Tuscans set on Fire,
With Arms, their King to Punishment require.

Dryden.

IX. And
against a
King that
has abdica-
ted his King-
dom.

IX. Secondly, If a King, or any other, has abdicated his Government, as he manifestly has who forsakes it, after that time, we may do the same to him, as to any Private Man; but he that is negligent

(b) *Plutarch* in the Life of *Lyfander*. The *Spartans* tried their King for his Life, because that avoiding Battle, he retreated to *Tegen*. And the same Author in the Life of *Sylla*: The *Spartans* deposed several Kings, as unfit to Reign, being pitiful and insignificant Fellows. See the same *Plutarch* of *Agis* unjustly, but yet condemned. They starved to Death the King of *Mosynacum* *Mela* B. 2.

(i) And the *Hebrurian* Soothsayer to those that rose against *Mezentius*,

Quos Justus in Hostem
Fert Dolor.

Whom Just Revenge against Mezentius Arms.

Dryden.

negligent in his Government, cannot be said to forsake it.

X. *Thirdly*, It was *Barclay's* Opinion, that if a King would alienate his Kingdom, or subject it to another, he lost it. But that I deny: For if such a Kingdom be Elective, or go by Succession, such an Act (of Alienation) is in it self void, and whatsoever is in it self void, can have no effect of a Right. Wherefore, as also in the Case of a *Tenant*, to which I have compared such a King, the Opinion of the Civilians is more probable, that in yielding up his *Property* to a Stranger, he gives him nothing. And whereas it is said, that the Fruits and Profits revert to the *Landlord*; it must be understood after such a time appointed by Law. Yet if a King should really endeavour to deliver up his Kingdom, or to subject it to another, I doubt not, but in such a Case, he may be resisted. For Empire (as have I said) is one thing, and the manner of holding it another; the change of which, the People may strive to hinder, for that is not comprehended under the Notion of Empire. To which we may fitly apply that of *Seneca*, in a Case not much different: *Tho' our Father is to be obeyed in all things, yet not in those, whereby he ceases to be a Father.*

X. Or against a King that would alienate his Kingdom; but only to prevent the delivery of it.

XI. *Fourthly*, The same *Barclay* observes, that (k) if a King shall directly, like an Enemy, design the utter Destruction of the whole Body of his People, he loses

XI. Or against a King that behaves himself as an Enemy to the whole Body of the People.

(k) For the same Reason, he that is Tribune of the People, may by the Law cease to be so, as *Gracchus* ingeniously argues; whose Words are worth any ones reading in *Plutarch: Johannes Major* in B. 4. *Sententiarum* says, A People cannot (divest themselves of) the Power of deserting the Prince in a Case, which would manifestly tend to his Destruction; which you may fitly explain out of what is said in this Place,

loses his Kingdom; which I grant. For the Design of Governing, and the Design of Destroying are inconsistent together. Wherefore he that professes himself an Enemy to the whole Nation, is presumed by that very Act to renounce the Government. But this can hardly be imagined to be found in a King, that is in his right Senses, and that governs only one Nation. But if he govern many, it may so happen, that in favour to one, he should endeavour to destroy another, and plant it with new Colonies.

XII. And against a King, who breaks the Condition, upon which he was admitted.

XII. *Fifthly*, If a Kingdom be confiscated, either for Felony against him of whom he holds it is, or by a Clause agreed on at his Admission, as, if the King (1) does this, or that, his Subjects shall then be absolved from all Allegiance to him, then also a King becomes a private Person.

XIII. And against a King, who having but one part of the Sovereign Power invades the other.

XIII. *Sixthly*, If a King should have but one part of the Sovereign Power, and the (m) Senate, or People, the other part, if such a King shall invade that part which is not his own, he may justly be resisted, because he has no Sovereign Power in that part. Which I believe may take Place, though it be said, the Power of making War is wholly in the King, for that is to be understood of a Foreign War: since otherwise, one might have part of the Supreme Power, and have no Right to defend that part; and where it is so, the King himself may also, by the Right of War, lose his part of the Empire.

XIV. Se-

(1) See Mariana B. 8. of the Kingdom of Arragon.

(m) You have an Example in the State of Genoa in Bezar, B. 13. in Bohemia in the Time of Wenceslaus, Hist. B. 10. Add Azerius B. 10. Instit. Moral chap. 8. and Lamberius Scafnaburgensis of Henry IV.

XIV. *Seventhly*, If in the conferring of the Crown, it be expressly (n) said, *that in some certain Cases* the King may be resisted; though it cannot be supposed, that by that Agreement any part of the Sovereign Power is retained, yet certainly some Natural Liberty is reserved to the People, and exempted from the Power of the King. For he that alienates his own Right, may possibly diminish that Right by Agreements.

XIV. *against who gets such a licence in some Cases.*

XV. We have treated of him, who has now, or has had a Right to govern; it now remains, that we say something of him that Usurps the Government; not after he has either by long Possession, or Agreement obtained a Right to it, but so long as the Cause of his unjust Possession continues. And certainly whilst he Possesses the Empire, his Acts may be obeyed; yet not as they are his out of Right, for he has none, but upon this Account, that 'tis probable he who has the Right to govern, whether King, People or Senate, had rather that his Laws should, during that Time, be Obligatory, than that, the People being without Laws, and without Judgments, there should follow the utmost Confusion. *Cicero* condemns *Sylla's* Laws, as cruel upon the Children of the Proscribed, making them incapable of Honours; yet he thought they ought to be observed, affirming (as *Quintilian* tells us) that the Constitution of the Commonwealth was so wrapt up in those Laws, that if they were abrogated, it could not subsist. *Florus* also says of the Acts of the same *Sylla*: *Lepidus* endeavoured to repeal the Acts of that great Man, and not with-

XV. *As Usurper, how far so be obeyed.*

out

(n) See Examples in *Thuanus*, B. 131. Histor. in speaking of the Year 1604. and B. 133. of the Year 1605. in *Brabant* and *Flanders*; speaking of the Year 1468. in the League between the *French* King, and *Charles* Duke of *Burgundy*. Also of *Poland* in *Chytraus Saxonie* 24. and of *Hungary* *Bonfinius*, Decad. 4. Lib. 9.

out Reason, if he could have done it, without the Ruin of the Commonwealth. And again, It was necessary for the State, then sick and wounded, to rest at any Rate, lest her Wounds should be ripp'd open by the very Cure.

But in those Cases, which are not so necessary, and contribute towards establishing the Usurper in his unjust Possession, if by disobeying we run no great hazard, we must not obey. But the Question is, whether it be lawful to depose an unjust Usurper of the Government, or finally to kill him.

XVI. An Usurper may be killed during the War, if no Contract be made with him.

XVI. And First, If he that Usurps another's Dominion, has not gained it by a Just War, that is, such a War as has all the Rights required by the Law of Nations, nor by any Contract made with him, or Faith given to him, but holds his Possession only by Force, the Right of War seems to continue, and consequently what may lawfully be done against an Enemy, may be lawfully attempted against him, whom any private Man may lawfully kill. *Against Traitors and Publick Enemies, every private Man (says Tertullian) is a Soldier.* So against Deserters in Time of War, any Man is allowed to take publick Revenge, for the common Safety.

XVII. By Virtue of an antecedent Law.

XVII. The same may be said (according to *Plutarch*) if before such an Invasion, there was any publick Law, empowering any private Man to kill him, who dares in his Presence commit such, or such a Fact; as for Example, if a private Man should go with a Guard about him, should assault a Fort, or kill a Citizen uncondemned, or illegally condemned, or presume to create a Magistrate without just Suffrages. Many such Laws were extant in the Cities of *Greece*, with whom it was reputed lawful to kill such Tyrants. Such was *Solon's Law* at *Athens*, after his Return from *Pireus*.

Piræus, against such as had abolished Popular Government, or after its being abolished, had born any Office, (o) and as the *Valerian Law* at *Rome*, if any one bore an Office without a formal Process; and the *Consular Law* after the *Decemviral Government*, that no Man should create a Magistracy without an Appeal; and he that did it, might lawfully be killed.

XVIII. Nor will it be less lawful to kill the Usurper of a Government, if he has a Commission from him, who has the just Right to govern, whether it be the King, People or Senate. Among these we may also number the Protectors of Kings during their Nonage, as *Johoiada* was to *Joash*, when he had drove *Atbalia* from the Kingdom.

XVIII. By his Commission who has a Right to the Crown.

XIX. Unless in one of these Cases, I do not see how it can be lawful for any private Man by Force, either to dethrone or kill an Usurper. Because it may be, he that has the true Right, had rather leave the Usurper in quiet Possession, than engage his Country in Bloody and Civil Wars, which generally follow the expelling, or killing such Men, especially if they have a strong Faction at home, or powerful Friends abroad. Or because at least it is doubtful, whether that King, or People, would be willing to put it to so desperate a hazard, without whose manifest Consent all Force would be unjust. *Favonius* said, *χείρον εἶναι μοναρχίας ἀνόμους πόλεμον ἐμφύλιον*, *A Civil War is worse than any Tyranny*: And *Cicero*, *Any Peace is preferable to a Civil War*. And *T. Quintus* to the *Lacede-*

XIX. Why an Usurper is not to be killed, but in these Cases.

(o) *Plutarch* in the Life of *Publicola*. It might be lawful to kill him untried, who attempted the Government; and again, *Solon* would have an Usurper, being taken, try'd for it; and *Publicola* allows him to be kill'd without such Trial,

Lacedemonians, that it was better for them (p) to bear the Tyranny of *Nabis*, than by endeavouring to recover their Liberty, unhappily ruin their City. To this purpose was the Advice of *Aristophanes*, not to nourish a Lion in the City, but if he were nourished, to bear with him.

When it is indeed a very disputable Point, whether we shall chuse Liberty or Peace; as *Tacitus* speaks. And *Cicero* calls it, a difficult Question in Politicks, whether when our Country is oppress'd with Tyranny, we may endeavour to rescue it, tho' with the extreme hazard of the State. But private Men must not pretend to determine, what the common Judgment of the People would be in this Case. Wherefore there's great Injustice in this Expression:

Detrahimus dominos urbi servire paratæ.

(q) *Deposing Princes we the City Free,
Just on the Brink of Slav'ry and Ruin.*

As there is also in that Answer of *Sylla*, who being

(p) Which *Plutarch* thus explains in the Life of *T. Quintius*. When he saw, that the Tyrant could not be destroyed without the ruin of many other *Spartans*. Not unlike this is what *Plutarch* relates in the Life of *Lycurgus*, that a certain *Spartan*, when he had read

Σθενόντας ποτε τὰς δὲ τυραννίδας χάλχεον ἀρῆς
ἔειλε, Σελινῶντι δ' ἀμφὶ πύλας ἔπεσον.

*Whilst to Destroy the Government they sought
War snatch'd 'em off; at Selinus they fell.*

He answered, δικάτως τεθνῆκοντι, &c. those Men did justly Perish, for they should have waited, till the Government took Fire of it self.

(q) *Plutarch* in the Life of *Cato* the Elder, concerning *Antiochus* the Great, ἐποίησατο ἀτίον, &c. He made setting the Greeks at Liberty, who at the same time did not want it, his Pretence for a War.

ing ask'd, why he came into his own Country so armed, reply'd, to deliver it from Tyrants.

3. Plato gave better Advice to *Perdiccas*, thus translated by *Cicero*, He should attempt no more in a State, than he can justify to the Subjects; he must offer no Violence to his Parent, or Country. To the same Sense is that of *Sallust*: For tho' you could govern your Country, or Parents, by Force, and correct Offences, yet it is troublesome, especially when all Changes of Government are attended with Slaughter, Banishments, and other Miseries of War. Not much different is that of *Stallius* in *Plutarch*, in the Life of *Brutus*, It is not fit for a prudent and wise Man to hazard himself in Popular Tumults, for Knaves and Fools. To which we may refer that of *St. Ambrose*, This also will gain you Reputation, to rescue the Poor out of the Hands of the Oppressor, to deliver the condemned from Death, as far as you can do it without Sedition, lest otherwise you should seem to have done it, more out of Ostentation than Compassion, and so cause greater Wounds, whilst you propose to Cure the Less. *Thomas Aquinas* said, that the pulling down of any Government, though Tyrannical, was sometimes Seditious.

4. The Fact of *Ehud*, against *Eglon* King of *Moab*, should not move us to the contrary Opinion; for the Scriptures positively tell us, that God raised up *Ehud* to deliver *Israel*, therefore what he did was by a special Commission. Neither does it appear, that this King of *Moab* had by Agreement any Right of Sovereignty; for God did execute his Judgments even against other Kings by such Instruments, as he himself pleas'd, as by *Jehu* against *Jezebel*.

Judg. iii. 15.

Neh. ix. 27

2 King. ix.

XX. But in a controverted Right, no private Person ought to determine, but obey the present Possessor. Thus *Christ* commanded to pay Tri-

XX. In a controverted Right no private Man to be Judge.

Mat. xxii.
20.

bute to *Cesar* (r) because the Mony had his Image or Supercription; that is, because he was then in Possession of the Empire.

CHAP. V.

Who may lawfully make War.

I. The Efficient Causes of War are those who engage in it, either upon their own Account, as Principals;

I. **A**S in other Things, so also in the Actions, of the Will, there are wont to be three Efficient Causes; *Principals, Assistants, and Instruments.* The Principal Efficient Cause in a War, is generally he, whose Quarrel it is. In a private War any private Person; in a publick, the publick Power, especially if Supreme. Whether a War may be justly undertaken in behalf of another, not making War, shall be treated of in another Place. In the mean time this is most certain, that every Man has naturally a Right to Revenge himself; and therefore were Hands given us.

II Or upon the Account of others, as Assistants;

II. 1. But it is not only lawful for us, as far as we are able, to be beneficial to another, but also commendable. They who write of Offices, justly say, that there is nothing so useful to one Man, as another Man. But there are several Obligations, wherein Men stand bound to the mutual Assistance of each other. For Kinsmen generally agree to help one another, and Neighbours call for one another's Assistance, and Citizens help their Fellow-Citizens; from whence comes that Saying, *Porro Quirites, Courage, Romans! come on, Friends! and quiritari, to beg Assistance, to call for Help of one*

(r) This is the most certain sign of Possession. See this in the *Hist. Gen. Rex.* 18.

another, as the Romans us'd to do. *Aristotle* said it behoved every one to take up Arms, either to defend himself upon an Injury offered him, or for his Kinsmen, Benefactors or Companions, when oppressed. And (a) *Solon* declared That a happy State, wherein every Man looked upon Wrongs done to another, as done to himself.

2. But though there were no other Obligations, it is enough that we are allied by common Humanity. For nothing incident to Human Nature should be Foreign to another Man. It was well said of *Menander*,

Injuriarum, si improbis, &c.

If every one would honestly engage
Against the Foe, with just and equal Rage;
And make't a general and common Cause
To crush the proud Invaders of the Laws,
They would not, flush'd with impious Success,
Insult the Poor, and Innocents oppress:
But punish'd for their Crimes, would Justice own,
And be reduc'd to few, or quickly none.

And this of *Democritus*, It is every Man's Duty, to the utmost of his Power, to assist the injured, and by no Means to neglect it, for this is just and good; which *Lactantius* thus expresses, God, who has denied Wisdom to all other Creatures, has furnished them with such natural Defences, as may secure them from sudden Assault and Dangers; but unto Man, having made him naked and unarmed, the better to instruct him

(a) Those words *Plutarch* relates. That City is most happy in its Inhabitants, in which they who suffered no Injuries were as ready to avenge them as those who actually felt them, making the Cause their own and punishing who those offer'd 'em. To which also what in *Rudens* of *Plautus*. Break the Neck of an Injury before it reaches us.

him in Wisdom, besides other Endowments, God has given natural Affection, which may teach us to defend, love, cherish each other, and to give and receive mutual Assistance to and from each other, against all Dangers whatsoever.

III. Or are Instruments, as Servants and Subjects.

III. By Instruments, we mean not Arms, nor such like Things; but such Voluntary Agents, as do however receive Directions from others; such is a Son to his Father, being part of himself naturally, or a Servant, as a part of his Master by Law. For as a part is not only a part of the whole in the same Relation, as a whole is the whole of a part, but that very thing which it is, is the whole of what it is: So Possession is said to be something of the Possessor himself. And in Democritus, Servants are to be used, as other Members of our Body, some to one purpose, and some to another. As then a Servant is in a Family, the same is a Subject in a State, and is therefore the Instrument of the Governor.

IV. By the Law of Nature none excused from War.

IV. Nor can we doubt, but all Subjects may naturally be employed in War, tho' some special Laws may exempt some; as formerly (b) Servants among the Romans, and now every where the (c) Clergy; which Law notwithstanding, as all others of that Nature, must allow of the Exception of extreme Necessity. Let this suffice to be spoken of Assistants and Subjects in General. For what Things particularly belong to them, shall be handled in their proper Places.

(b) Servius upon the 9th of the *Aeneids*.

(c) But the Levites formerly were excused from War, according to *Josephus*. Of the Clergy, see *Nicetas Choniates* B. 6. The Summary of *Charles the Bald* in *Sparnaco* 37 in *Gratian*, c. *Clericum*. dist. 5. & caus. 22. quest. 8. and the Canons have it thus. But how much more carefully they are observed by the Greeks than Latins, see *Anna Comnena*.

The End of the First Book.



